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ABSTRACT

The Adoption Assistance and Child Welfare Act of 1980 (PL 96-272) provided major federal initiatives to reform the state child welfare system. The goals of the act were to keep families together by providing them with services and to find permanent adoptive homes for children who could not be reunited with their parents. This report examines the results of the act 10 years after its enactment. The report consists of 5 separate papers. The first paper (by Richard P. Barth and Marianne Berry) on the outcomes of permanency planning after 10 years, reports on service outcomes, stability of placements, children's developmental outcomes, and children's and families' satisfaction with foster care. The second paper (by Judith Anderson) studies the characteristics of children in care, the rise in the foster care population, and adoption services. The background and purposes of PL 96-272, its implementation by the courts, and barriers to its continuing implementation, are reviewed in the third paper (by Mark Hardin). The fourth paper (by Alice Bussiere) considers that part of PL 96-272 which deals with federal adoption assistance. The final paper (by Joe Kroll and Roberta Frank) cites regulatory problems that hinder effective implementation of PL 96-272. Discussion concerns audits of state expenditures, administrative costs, and the lack of an adoption information system that requires states to report adoption data. Three of the papers include reference lists. (BC)

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The Adoption Assistance and Child Welfare Act of 1980

(Public Law 96-272)

THE FIRST TEN YEARS

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Compiled and Edited by
The North American Council on Adoptable Children

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August 1990

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August 1990

The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) is a landmark legislation that for the first time provided major federal initiative to reform and redirect the state child welfare system, to address the problem of children removed unnecessarily from their families and of children remaining far too long in a system that calls itself temporary. It's a good law, with good intentions, and it has had a positive impact on thousands of children and families. But in its ten year history, serious concerns have been raised about what it does not do, what it should do, and what we still owe the children it was designed to serve.

Through its network of parents and organizations, NACAC played a key role in passage of P.L. 96-272. We're committed to full implementation. We've been monitoring, shepherding, talking, assessing, and devoting considerable energy on behalf of America's vulnerable children. This report--by no means an absolute or complete retrospective on ten years under the law--is a start. We hope it generates active discussion, ideas, and "strategies for making things better for kids." It is a call for the realities of what President George Bush calls a kinder and gentler nation, a call for profound attention to our children and the value of a permanent, nurturing family.

Ernesto Loperena

Ernesto Loperena
President, NACAC

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FOREWORD

by Walter F. Mondale

As we look toward the 21st century, we must take a hard look at the adequacy of today's social policy to meet the pressing needs of our nation's most vulnerable citizens: children at risk of abuse and neglect. Several recently published "report cards" on the status of children in America reveal that our country deserves barely a passing grade. One of every four children under the age of six is poor; three of every 100 children, (that is, one child in a typical elementary school classroom), are reported abused or neglected; and one of every 1,000 children in America is removed from the custody of her or his parents. More than 360,000 children live in some type of foster care at any one time and over 500,000 children nationwide literally have no place to call home.

Ten years ago, Congress passed landmark child welfare legislation to discourage the use of foster care and to encourage both preventive services to families in crisis and permanency planning for children unable to remain with their own families. As a member of the U.S. Senate, I had the privilege to participate in the debate to reform our nation's foster care system. I also had the honor as Vice President to be part of the Administration that signed this new policy into law. What propelled us into action at that time were the many individuals and organizations alarmed by the status of children living in foster care. As chairman of the U.S. Senate Subcommittee on Children and Youth, I held many hearings to review the foster care system. My colleagues in the House of Representatives did likewise.

What we found was both sad and shocking. An estimated 500,000 children had been removed from their homes and placed in foster care because of abuse or neglect. Yet no one knew at any one time exactly how many children had been placed in care, where these children lived, how long they had been in the foster care system, or what type of effort was being made to find them permanent homes.

The Adoption Assistance and Child Welfare Amendments of 1980 (P.L. 96-272) changed all this. Our goals were simple and made good sense: 1) keep families together whenever possible by providing them with the services and supports they need, and 2) find permanent adoptive homes for children who could not be reunited with their parents.

P.L. 96-272 was not so simple to implement, however. It required a vast overhaul of state child welfare systems; significant changes in the delivery of services; implementation of critical protections for children, including case reviews, case planning, and permanency plans; and development of new information systems. At the federal level, the law required leadership, technical assistance, oversight, and an infusion of dollars to implement these new programs and reforms.

The purpose of this report is to raise the critical question of how well we have treated our children. In other words, what are the results of P.L. 96-272? We know that both the number of children in out-of-home placement and the length of their stays in foster care have decreased significantly. We know that more children are being placed for adoption. But do we really know the extent to which the legislation has made a difference in the lives of children and their families? Or how much P.L. 96-272 has really shifted priorities away from placement and toward preventive services, as required by law?

In spite of the success of P.L. 96-272-- and there has been considerable success-- a consensus has emerged among lawmakers, policy analysts, national organizations, and advocates that today's child welfare system faces another crisis. The children going into care are more troubled. Substance abuse, including alcohol and crack cocaine, is putting children at serious risk and is increasingly a primary cause for removing children from their parents. Although children stay in care for shorter periods of time, they return to substitute care with increasing frequency. Growing numbers of adoptions disrupt, with children placed back into foster care. Families do not receive adequate access to the services and community supports they need to keep them together and prevent removal of their children or disrupted adoptions.

Congress is poised once again to debate child welfare reform. States have already begun to experiment with innovative approaches to family preservation; they are seeing positive results. Several national groups, including the National Commission on Children (chaired by Senator J.D. Rockefeller IV) and the National Commission on Child Welfare and Family Preservation (sponsored by the American Public Welfare Association), have taken up the charge to evaluate the current status of children and make recommendations for reform of the child welfare system.

This report is a critically important contribution to the re-emerging debate over child welfare reform. I believe it will be of value to specialists and non-specialists alike. The authors, all notable experts in this field, have investigated their topics with great care. Their work provides vital information and analyses about the impact of P.L. 96-272. Together, these papers make a powerful call for national re-evaluation of our child welfare system. The North American Council on Adoptable Children deserves our gratitude for producing this report, a continuation of the fine work it has accomplished since its founding in 1974.

A clear lesson from the past decade is that we must continue to be vigilant in protecting the welfare of our children. Children cannot be our last hope for a better future, they must be our first. As psychologist Erik Erikson has said, "The deadliest of all possible sins is the mutilation of a child's spirit." America cannot afford to risk the life or the spirit of a single child.

Walter Mondale was a United States Senator through the developmental stages of what was to become P.L. 96-272, and Vice President of the United States when it was signed into law in June 1980. Now an attorney in private practice in Minnesota, he continues to be a strong advocate for vulnerable, hurting children and NACAC thought it fitting that he be a part of this report.

A DECADE LATER: OUTCOMES OF PERMANENCY PLANNING

by Richard P. Barth, University of California at Berkeley
and
Marianne Berry, University of Texas at Arlington

Child welfare policy has long endeavored to provide a permanent, safe, and family-like living situation for every child. Public Law 96-272 (P.L. 96-272) stridently expresses intent "to ensure that each child achieve placement in the least restrictive (most family-like) setting available and in close proximity to the parents' home, consistent with the best interests and special needs of the child (passed 1980)." Preventing the need for placement through family maintenance services and reuniting children in foster care with birth or extended families are the foremost goals of permanency planning. If a child cannot remain with birth or extended families, adoption is believed to provide the most permanent of homes. Guardianship is considered the next most preferable arrangement; long-term permanent foster care the least so.

Whereas priority of "permanent" placements is defined by law, use and success of placements has other determinants. The risk that a child will be reabused in any placement is a spectre that hangs over all child welfare planners and practitioners. **Stability** of "permanent" placements also deserves consideration in assessment of preferred placements. Placement moves are often costly to children, families, and communities, so true "permanence" in terms of stability affects the desirability of these placements. A more neglected aspect of permanence involves the lasting legacy of placements on the child's **development**. An influence often overlooked as a critical indicator of program success. The child's and family's **satisfaction** with placement is a fourth indicator of suitability. This paper first reviews trends in delivery of each service program for children and then considers evidence about the relationship of placement prevention, reunification, adoption, guardianship, and long-term foster care to these four placement outcomes. Given the paucity of national data, we also draw on state data-- especially data from California, which has nearly one in eight of the nation's children.

Child Welfare Service Programs

Placement Prevention

Federal child welfare legislation mandates that "in each case, reasonable efforts will be made (a) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of a child from his home, and (b) to make it possible for the child to return to his home" (42 U.S.C. 671 (a)(15); 1986). Agencies have generally not been held accountable for failing to provide reasonable efforts to prevent placement (Ratterman, Dodson, and Hardin, 1987). This is partly due to difficulties defining reasonable efforts (Seaberg, 1986) and also due to the unavailability of placement prevention services.

Although reasonable efforts can assume many forms, *intensive family preservation programs* are one type of preventive service increasingly employed. These programs are based on the proposition that efforts to prevent placement should include prompt, comprehensive in-home services to improve family relations and keep the family together. This commitment is often expressed in round-the-clock availability of workers, application of a wide range of behavior-changing skills and community resources, and the ability to work to strengthen the family's ecological system. Unlike conventional child welfare services, intensive family preservation programs are short-term and labor-intensive, with workers serving only a few families at a time and cases typically closing within a few months. Intensive family preservation services differ from each other in theoretical orientation and format (Barth, 1990; Nelson, Landsman and Deutelbaum, 1990).

The extent of reasonable efforts is partially determined by availability of these intensive placement prevention services (Hunner, 1986; Seaberg, 1986). Availability of intensive placement prevention programs has grown since the 1980 child welfare reforms. The *Directory of Family-Based Services* (National Resource Center on Family Based Services, 1987), lists 131 "intensive family services" programs in 37 states. Thirty-four percent of these programs were, however, located in Iowa, Minnesota, New York, or Wisconsin. Thirteen of the remaining states had only one program serving a caseload of only 60 to 100 families per year. Approximately 180 programs based on the Homebuilders model have been developed in 29 states (S. Leavitt, personal communication, January 30, 1990). A recent review of selected family preservation legislative enactments (National Conference of State Legislatures, 1989) identifies state legislated programs in eight states serving a large number of families yearly (e.g., 904 families in Iowa, 325 families in Illinois). The total number of families is probably less than 20,000. Given the roughly 1,000,000 substantiated cases of child abuse each year and the 224,000 new entries into foster care in 1988 (American Humane Association, 1989; T. Tatara, personal communication, May 4, 1990), family preservation services are still not available for the vast majority of children.

Family Maintenance and Reunification From Foster Care

Family maintenance services are voluntary or involuntary services delivered by public child welfare agencies to children and families in their own homes. (Placement prevention services are a component of family maintenance and can be used to facilitate family reunification following temporary foster care; *placement prevention* is discussed separately from *family maintenance* and *reunification* here because applicable research is quite distinct.) Family maintenance services are typically comprised of case management plus referral to a standard menu of services--especially parenting classes, alcohol and drug treatment, and employment counseling. Although good national data on family maintenance services are scarce, they appear to be brief. For example, in 1985 in California, only 33 percent of families received more than three months of services (State Department of Social Services, 1986) and the average was 4.1 months. By 1989, almost half of family maintenance recipients received more than three months and the average was 5.6 months (SDSS, 1990). When family maintenance services are not appropriate or successful, efforts to reunify children who have been placed in foster care are now limited to 18 or 24 months (Barth, 1986).

The National Resource Center on Family Based Services (1987) describes 39 home-based or family-centered programs in 20 states specifically aimed at reunifying families. Most are private agencies who contract with county agencies. Counties also serve reunified families under their own auspices.

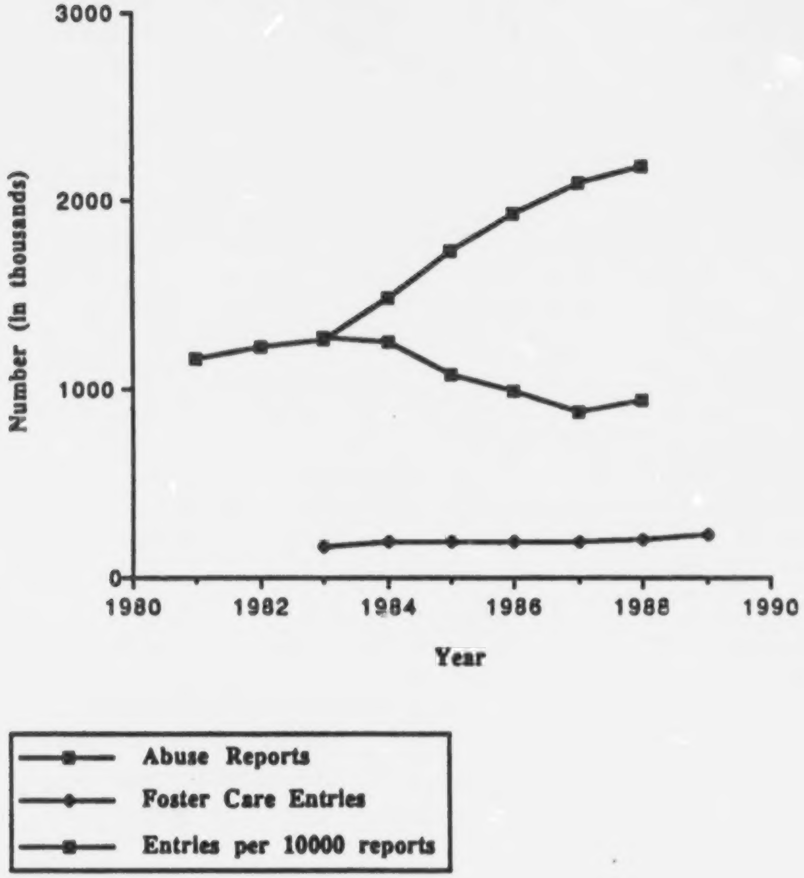
The number of children in foster care has risen 19 percent in the last nine years (U.S. Select Committee on Children, Youth and Families, November 1989). Recent increases in the number of children in foster care at any time must be considered in perspective. Whereas the estimated 1989 foster care population of 360,000 is approximately 58,000 children more than it was in 1980, the number of children reported for child abuse has increased from 1,154,000 in 1980 to 2,178,000 in 1987 (an 89 percent increase). Figure 1 shows respective changes in child abuse reports and foster care entries. Placement in foster care is not a reflex response to child abuse. And children in foster care do go home. Of 178,000 children who left substitute care during fiscal year 1983 alone, over 100,000 (56 percent) were discharged to their biological families (Tatara, 1989).

Adoption

If reunification cannot be achieved, adoption is the preferred alternative since it provides a substitute family acceptable to society requiring minimal state surveillance or support. The 1980's brought a reduction of obstacles to older child adoption such as the cost of special medical, educational, and psychological services; changing policies against foster parent adoptions; and automatic ruling out of children as "adoptable" because other adoptive placements had failed

Figure 1

Abuse Reports and Foster Care Entries, 1980 to 1989



* Foster care entry rates are estimated for 1988, 1989 (T. Tatara).

Sources:
American Humane Association (1989).
U.S. House of Representatives Select Committee (1989).
T. Tatara, (1990). Personal communication, May 4, 1990.

handicaps or age. Older child adoption was intended to be a major contributor to reduction of long-term foster care under permanency planning (Fein, Maluccio, Hamilton and Ward, 1983; Lahti, *et. al.*, 1978). Recent concerns about stability of older child adoptive placements indicate only slight retrenchment from agency interest in promoting adoptive placements (Barth, Berry, Goodfield, Carson and Feinberg, 1986). Increased use of federal adoption subsidies partly complements those efforts, rising from $442,000 in 1981 to seven million in 1983 (Fales, 1985).

Yet, in 1984, despite stated preference for adoption in the law, it was the planned placement goal for only 14 percent of the children in substitute care in the United States (less than that for long-term foster care, which was planned for 16 percent of the children in care) (Maximus, Inc., 1984). While adoption was the goal for 14 percent of such children, only 11 percent were adopted.

Adoption as a placement outcome is driven both by adoption workers' perceptions of which children are adoptable, and by availability of adoptive homes. Many children have been indeed freed for adoption, but continue to wait for an appropriate home. Many other children also waiting do not show up in these statistics, because many adoption workers wait until a specific home is available before freeing the child for adoption. Many children in foster care will never be legally freed or adopted. Adoption is unlikely for adolescent children, and is especially unlikely for Black male children of any age (Maximus, Inc., 1984). In California, the number of Black children who are three or younger and in foster care without an adoption plan has tripled since 1989 and is approaching 3,000 children (Barth and Pizzini, 1990).

Guardianship

Guardianships may be preferable to adoption under some circumstances. Three commonly understood exceptions to the preference for adoption are: parents have regularly visited the child and the child would benefit from continuance of the relationship; the child is older and does not wish to have her or his relationship with his parents legally severed; the foster parents are unwilling to adopt but the child would suffer if removed from their custody for purpose of adoption. In such cases, which most often involve relative caregivers, guardianship is the preferred option. Guardianship is established by court order but does not require termination of birth parents' rights (Dodson, 1984; Leashore, 1984). Guardianship differs from state to state (and is not available to all foster children), but in general provides guardians with authority to make parenting decisions without agency intervention. Guardians can authorize medical care and enter into other legal agreements for a child. Legal guardians generally cannot obtain the financial assistance available to long-term foster and adoptive parents.

In most states, guardians must have their own counsel and must initiate the guardianship petition. Such hindrances, in addition to the recency and ambiguity of some states' laws, suggest relatively infrequent use of guardianship dispositions in permanent plans for children. Yet the importance of placing children with relatives is widely recognized and is an impetus for guardianship. In some states the percentage of cases with guardianship as the permanent plan is roughly equivalent to that of adoptions (State of California Legislative Analyst, 1985). In California, guardianship is planned for nine percent of foster care children each year (Barth and Berry, 1989).

Longterm Foster Care

Long-term foster care is not a preferred option. Reducing extensive use of long-term foster care was a clear intent for P.L. 96-272, the Adoption Assistance and Child Welfare Act. Various studies basically agreed that stays in foster care were too long. Maas and Engler (1959) found that 31 percent of children in foster care had been there ten years; Fanshel and Shinn (1978) found 36 percent of children in foster care were still in foster care five years later; and Magura (1981) reported that 22 percent of children in boarding foster family care had been there for six years or more. These stays have been reduced. By 1984, only ten percent of children in foster care had been there for six years or more (Tatara, 1989). In California in 1987, fewer than five percent of children in foster care had been there five or more years (Barth and Berry, 1988). Nationally, the median length of time in foster care declined from 2.4 years in 1977 to 1.5 years in 1984 (Tatara, *et. al.*, 1987).

About half of the 276,000 children in foster care in FY 1985 were age 13 or older; about 50,000 were age 16 or 17 (Maximus, Inc., 1987). In 1985, 9.4 percent of the children "aged-out" of foster care (reached age 18) but by 1989, the percentage was reduced to 5.9 percent (this 37 percent decline is partly attributable to the 18 percent decline in 15-18 year olds in the general child population during those years). Large numbers of teens will continue to age out of foster care to live on their own, and these teens need skills and resources to facilitate independent and productive living upon discharge.

Passage of P.L. 99-272, the Independent Living Skills Initiative, has been instrumental to improvement of services to youth emancipated from foster care. Services typically include life skills training and employment preparation. The extent to which these interventions address the serious challenges facing emancipated foster youth has not been assessed.

Service Outcomes

Child welfare reform provided many new mandates accompanied by a modicum of new resources. Whereas most evaluations critique compliance with regulations and procedures, the most critical research questions are about outcomes: are children safe or reabused, in stable or transient situations, achieving desired developmental outcomes or falling further behind, and satisfied or dissatisfied with the services they receive?

Abuse During Care

Child welfare services aim to protect children from reabuse but, at best, only reduce it. The likelihood of reabuse varies by type of placement, with reabuse most likely when children are returned home and least likely when children are adopted.

Placement Prevention

The effectiveness of intensive family preservation programs in reducing reabuse is difficult to determine because these programs are not limited exclusively to abusive families. Whereas the majority of families served suffer interaction problems that can include abuse and neglect, services may also be aimed at reducing running away or other family conflicts. The number of families still intact at termination can be used as an approximate indicator of reduction of abuse during treatment with some caution about its validity as the only indicator of effectiveness.

The sample sizes of placement prevention program evaluations vary, with many studies evaluating fewer than 100 families. One larger evaluation of the Homebuilders program in Washington reports a placement prevention rate of 82 percent at termination among 216 families (Pecora, Fraser, Haapala and Bartlome, 1987). Overall, family preservation programs report termination success rates of 71 percent to 94 percent (see Table 1).

Another large study of 367 families served by the In-Home Family Care programs in San Francisco and Oakland, California, indicates only six percent of the families evaluated had been reported by Family Care workers to child protective services because of abuse or neglect either while in treatment or soon afterward (Berry, 1990). In this program, the largest gains during treatment were made in parents' child care skills, particularly discipline. These skills, on the average, continued to improve after services had ended, as judged by workers at one-month, six-month, and one-year follow-up visits. Children were especially likely to remain in the home when parents' discipline skills continued to improve after service.

Studies comparing outcomes of intensive family preservation services to control groups receiving traditional placement prevention and family maintenance services are scarce. The best of these find that intensive services are more successful at preventing placement. Pecora, Fraser, and Haapala's study of matched groups (1990) found a placement rate of 44 percent among intensive family preservation families and a rate of 85 percent of families receiving traditional family maintenance services. Other studies, which have not matched

Table 1: Preservation Outcomes Among Family Preservation Programs

		Success Rate		
			At Follow Up	
Program	Sample Size	At Termination	3 mos.	12 mos.
Emergency Family Care-Alameda (Berry, 1990)	40	90%	85%	75%
Emergency Family Care-San Francisco (Berry, 1990)	327	97%	93%	90%
Family Program Northern Virginia Family Service (Bribitzer &Verdieck, 1988)	42	55%		
Hennepin County, Minnesota Family Study Project (AuClaire & Schwartz, 1986)	55	55%		
Homebuilders 1989 (Pecora, Fraser, & Haapala, 1990)	409	94%		
Homebuilders 1986-87 (BSI, 1987a)	444		97%	
Homebuilders 1975-76 (Kinney, et al, 1977)	80		97%	
Homebuilders 1974-86 (BSI, 1987b)	2928		94%	88%
Nebraska Intensive Services (Stein, 1985)	73	89%		
Oregon Intensive Family Support (Showell, 1985)	261	88%		73%
Parsons Child and Family Center (Reid, Kagan, & Schlosberg, 1988)	431	93%		
Ramsey County, Minnesota (Lyle & Nelson, 1983)	34	76%		
Utah Family Preservation (Callister, et al, 1986)	168	85%		
Utah Family Preservation (Pecora, et al, 1987)	120	71%		
Utah Family Preservation (Pecora, Fraser, & Haapala, 1990)	172	91%		

groups so rigorously, find less conclusive differences in placement rates (AuClaire and Schwartz, 1986; Szykula and Fleischman, 1985).

In the four federally funded abuse prevention demonstration projects implemented from 1974 to 1982 and reviewed by Cohn and Daro (1987), reabuse occurred among 30 percent to 47 percent of abusive families served by various preventive programs. As demonstrated by many current family preservation programs, abuse was less likely when families had been provided a comprehensive package of services addressing the concrete and emotional needs of family members. Services were generally more effective with sexual abusers and least effective with neglectful parents.

Family preservation programs are now testing their mettle with drug-using families. The Families First program in Detroit has worked with 97 families involved with crack cocaine-- and only nine were placed in nonrelative foster care (Moore, 1989). A full 86 percent of all children served in Metro-Dade County's (Miami area) intensive family preservation programs were with parents or relatives at discharge and remained out of foster care at three month follow-up (Metro-Dade, 1989); of all the families served, 58 percent were involved with cocaine.

Family Maintenance and Reunification

Conventional family maintenance services serve a growing proportion of children who receive any child welfare services. Yet their capacity to prevent abuse is still unclear. A five-year follow-up of families (n=389) given intensive placement prevention or family reunification services provides another estimate of reabuse rates (Jones, 1983). Among families provided with such services, 17 percent had charges of maltreatment brought against them. Among families who received standard services, the reabuse rate was 22 percent. In only a third of the cases were families functioning adequately at the time of case closing. The rest closed for other reasons.

Another important five-year study of a pilot permanency planning project (Wald, Carlsmith, and Leiderman, 1988) compared 19 five to ten year old white children remaining at home and receiving extensive family maintenance services and 13 children of similar ages and circumstances who were placed in foster care rather than given services at home. Reabuse rates for the children given services at home were high: two were sexually abused; five continued to be hit severely although not injured enough to receive medical treatment; and four continued to be neglected. Among six other children who were returned home after an initial period of foster care, two were abused again and two were again neglected.

A study in North Carolina compared abused children ages 11 to 18 who were subsequently moved into foster care (n=114) or who received services in their own homes (n=106) (Runyan and Gould, 1985). These children were matched on age, race, sex, time of abuse, relationship to abuser and services provided. Children remaining in their own homes suffered a reabuse rate of 25 percent whereas 11 percent of children in foster care were abused (half by birth parents during reunification visits). When excluding reabuse by maternal parents of children in foster care, the risk for children at home was nearly five times that for children in foster care. Recent California data indicate that 40 percent of cases provided family maintenance services in 1989 had previously been terminated from child welfare services--this was up from 29 percent in 1985 (State of California Department of Social Services, 1986; 1990). Of those, only a small group (three percent) had first received out-of-home care; the majority had previously been given in-home services.

Adoption

Most studies of adoptive families find extremely low rates of abuse among this population. Sack and Dale found that not one of 12 children (with an average age of five and one-half years) with histories of physical abuse prior to adoption were reabused despite the difficulties of an adoption breakdown (Sack and Dale, 1982). Of the 82 disruptions studied by Boneh, 20 percent resulted from the agency's request for the child's removal but fewer than ten percent involved abuse by the adoptive parents (Boneh, 1979). Barth and Berry (1988) found reabuse an even rarer reason for disruption. Whereas adoption disruptions occur in about 11 percent of all older child adoptions (Barth, *et. al.*, 1988), alleged abuse of adoptive children was about one percent. National studies of child abuse and neglect confirm this estimate indicating that adoptive parents are alleged perpetrators in one percent of all reports, despite their representation of approximately three percent in the population at large (Russell and Trainor, 1984).

Guardianship

Rates of reabuse in guardianship cannot be reliably estimated from available data. Given that most guardians have been foster parents or relatives with close ties to the children, the rates may fall between those for adoption and long-term foster care.

Long-Term Foster Care

McFadden's (1985) review of abuse in foster care in 27 states found that complaints were filed against 0.3 to 6.7 percent of foster homes with substantiated complaints ranging from 0.2 to 2.7 percent of homes. The reabuse rates per child would be less than one-half of that since foster homes typically have more than two children. The national studies on child abuse and neglect confirm that foster parents are alleged abusers in 0.5 percent of all child abuse reports (Russell and Trainor, 1984). A study of child abuse in Arizona concluded that about seven percent of the foster child population is allegedly abused by foster parents (Bolton, Laner and Gai, 1981). One of the 13 children placed in foster care in the study by Wald and colleagues was exposed to excessive physical punishment and one to emotional abuse (Wald, *et. al.*, 1988). Efforts to estimate abuse rates in residential care yielded a complaint rate of 0.4 percent among 1,000 children and a confirmed complaint rate of 0.9 percent among more than 69,000 children in care (Rindfleisch and Rabb, 1984). Given that children in group care are more than twice as likely to be identified as difficult to control as are children in foster care, these abuse rates in group care are predictably higher than those for foster care (Fitzharris, 1985).

The Stability of Permanent Placements

A "permanent" placement is one that is intended, but not guaranteed, to last forever. Even though the law seeks permanence for children, whether in their own homes or with other families, permanence cannot be legislated. Replacement is inevitable in responsible child welfare services. Overall, while all types of placements are subject to disruption, adoption appears to be most stable and long-term foster care the least so.

Placement Prevention

A comparative study of 11 family-based preplacement prevention programs in six states (National Resource Center on Family Based Services, 1988) found placement rates of four percent to 25 percent in the 11 programs, with an average placement prevention rate of 84 percent. Another study of 14 placement prevention programs in Wisconsin (Landsman, 1985) found a prevention rate of 82 percent.

Family preservation programs are intensive and time-limited, usually serving clients within a one-to-two month period. Despite this short service time, the numbers of families deemed at risk of placement who continue to remain intact after leaving placement are quite high. Homebuilders reports preservation rates of 94 percent to 97 percent at three months following treatment, and 88 percent at one year after treatment (see Table 1). The Oregon Intensive Family Support program has a 73 percent success rate at one year after treatment (Showell, 1985). The Children's Home Society In-Home Family Care program reports an 88 percent success rate at one-year follow-up (Berry, 1990).

Evidence on children who are placed in out-of-home care and go back to their own homes and then return to foster care suggests an increase in recidivism since permanency planning. Fanshel and Shinn (1978) assessed 624 children three times over five years. The children had been in foster care at least 90 days and either remained there (n=227) or returned home (n=350) and had a 16 percent recidivism rate. Lahti and associates (1978) conducted a study of many foster children, comparing foster care cases in Oregon who were served by a three-year project Freeing Children For Permanent Placement, (n=259) and a control group of children in care (n=181). They reported that 20 percent of the children in their project were returned to out-of-home care following reunification efforts. Block and Libowitz (1983) found that 27 percent of children who had been reunified were subsequently replaced in foster care. Fein and her colleagues (1983) indicate a replacement rate of 32 percent. By two years, 70 percent of the children in foster care in Wald and associates' study were still living in a permanent home--a percentage roughly equal to that of the children given in-home services (Wald, *et. al.*, 1988). A study of 779 children in foster care at least two years in Connecticut at the beginning of 1985 indicates that most placements were stable; two-thirds of the children had had only one or two placements; a quarter of the foster parents were planning to adopt their foster children; and three quarters of the youngsters were expected to remain indefinitely with their foster parents (Fein, Maluccio, and Kluger, in press).

Recent findings, based on data from 23 states, indicate that 49 per cent of the children in foster care at the end of 1985 had more than one placement during the preceding three years. Including the current placement, 26 percent of children had experienced three or more placements during the preceding three years (Tatara *et. al.*, 1987). A full 25 percent of the children who entered foster care during 1985 had been in foster care before-- within the preceding 12 months alone. Just as children moved from foster home to foster home in the 1970's, they may now be moving from foster care back home and then back into foster care (Pelton, 1989).

Adoption

As a result of P.L. 96-272 and allied changes in child welfare, greater numbers of older and special needs children are entering adoptive placements. The rate of adoption disruptions has apparently risen since the advent of recent permanency planning reforms. The disruption rate in Kadushin and Seidl's pre-permanency planning study of older child adoptions was less than three percent (Kadushin and Seidl, 1971). Boneh (1979) reported 96 disruptions from 1970 to 1979 in the Massachusetts Department of Public Welfare, with the caveat that this is a low estimate due to lack of systematic reporting of disruptions. Fein, Davies and Knight (1979) found that 31 percent of adoptions were disrupted by the end of their five year follow-up period; this rate was equivalent to the recidivism rate for children returned home.

Cohen (1984) recently reported a disruption rate of seven percent per year for older child adoptions in Canada. Boyne and colleagues (Boyne, Denby, Kettenring, and Wheeler, 1984) reported a 23 percent disruption rate in their study of adoptive placements. Older children had still higher rates: 47 percent of the children aged 12-17 disrupted, compared to 25 percent of those aged nine to 11, 15 percent of those aged six to eight, and seven percent of those aged zero to five. California data suggests a modest increase in disruption rates since permanent planning with a rather stable rate of 8.7 percent across the 1970's and of 11 percent between 1980 and 1984 (Barth and Berry, 1988).

Block and Libowitz (1983) alternately found all 32 adoptees who had been discharged from foster care remaining in their initial adoptive homes at the end of the two-year study period. The Oregon Project's policy of "aggressive adoption" resulted in 64 adoptions and only two disruptions in the following 14 months (Lahti, 1982). Festinger's (1986) study of 897 adoptive placements in New York found an 8.2 percent disruption rate. Another large study of 235 older child adoptions found a disruption rate of 9.4 percent (Partridge, Hornby, and McDonald, 1986). Groze's (1986) study of 91 special need adoptions reports a 14 percent disruption rate. Since none of the studies followed adopted children to adulthood they consistently (but, we think, modestly) underestimate true disruption rates.

Intensive adoption preservation programs can reduce the disruption rate still farther. In two pilot programs, almost 90 percent of families who were at the point of disruption and received intensive in-home services were preserved (Shelly Leavitt, personal communication, December 21, 1987; William Showell, personal communication, February 29, 1988).

Guardianship

Guardianship may allow the child to live in a familiar environment (e.g., in a foster home where he has lived for the past few years or with relatives) without terminating contact with his original family. This allows a compromise between severance of ties to either family and may add stability to the foster placement (Derdeyn, Rognoff and Williams, 1978). No probability samples of the permanency of guardianships are available. Anecdotal evidence suggests that guardianships are vulnerable to break-down-- among nine guardianships developed in San Mateo County in California between 1978 and 1981, four had ended by 1987-- and that commitments of foster parents who agree to become guardians of young children may wither when those children reach adolescence (Ten Broeck and Barth, 1986).

Long-Term Foster Care

Long-term foster care is intended to be permanent. For many children it is not. Fein and colleagues (1983) reported a 50 percent replacement rate among their 14 children in permanent foster homes. All replacements involved children aged nine or over. Stone and Stone (1983) found a breakdown rate of 49 percent; while Block and Libowitz (1983) reported a recidivism rate of 28 percent. More than 20 percent of youth who left the Casey Family Program (Fanshel, Finch, and Grundy, 1989) foster care returned to their biological or adopted families, 37 percent emancipated at age 18, and 18 percent emancipated before age 18. One quarter ran away or were returned to agency or court jurisdiction at exit-- these were the least successful outcomes. Recent reports are far more sanguine about the likelihood that a child will not move more than once during his or her tenure in foster care, perhaps because long-term foster care is now reserved for older children with no other possible placements (Lawder, Poulin and Andrews, 1985).

Taber and Proch (1987) studied 51 teens in foster care and found they had a median of nine foster placements with a range from three to 33. The likelihood of replacement increased as foster children got older and stays in foster homes grew shorter with each replacement. Long-term foster care for teens is often a contradiction, with each placement more of a trial for foster parent and child. Many foster children run away before they age out of foster care; a full 20 percent of the children leaving substitute care in California in 1984 ran away (Maximus, 1984). Permanence is distinctively more likely when foster parents are well trained and prepared (Jones and Moses, 1984).

Measurable Developmental Outcomes

Although the "best interest of the child" is not the sole determinant of a placement, this concept continues to influence placement decisions. Perhaps the outcomes most closely aligned with this standard are the child's health, and educational and social growth. Measurable developmental outcomes seem to be least favorable for children returned home.

Placement Prevention

Evaluation of 14 placement prevention programs in Wisconsin (Landsman, 1985) found that, overall, families achieved significant improvement in mental health, reduction of child abuse and neglect, substance abuse, social isolation, and law violations. Children significantly improved in school performance, mental health, and behavior. These ratings were all based on worker assessment rather than more objective measures.

In the evaluation by Nelson and colleagues (National Resource Center on Family Based Services, 1988) of 11 family-based placement prevention programs in six states, family preservation was associated with the following changes during services: improvements in behavior, material resources, family structure, family dynamics, emotional climate, perceptions of problems, community perceptions of the family, informal support network, and community involvement. Those families who had children removed had significant declines in behavior, family dynamics, emotional climate, community perception of the family, and community involvement. Overall, the largest numbers of families made gains in behavior (70 percent), family relationships (65 percent), and emotional climate (64 percent), and the fewest made improvements in material resources (21 percent) and use of services (47 percent).

Given the short-term nature of these preventive programs, this study does not answer the nagging question of longevity of families' gains, particularly since the greatest gains were made in more intangible and elusive skills.

One evaluation of Homebuilders reports that the majority of families improved in the child's school attendance, hyperactivity, delinquent acts, and peer problems as judged by the parent or a therapist at the end of treatment (Kinney, Haapala, Booth and Leavitt, 1988). However, all families were judged to have remained the same regarding medical problems or physical handicaps, and the majority of families made no improvements regarding alcohol abuse or learning disabilities.

Another evaluation of Homebuilders looked at school adjustment, delinquent behavior, home-related behavior, and cooperation with the agency (Pecora, Fraser, Haapala and Bartlome, 1987). Except for cooperation, children in the program made significant positive improvements during service. Parents also made significant improvements in supervision of younger children, parenting of older children, attitudes toward preventing placement, and their knowledge of child care. In the Utah Family Preservation program (Pecora, *et. al.*, 1987), children made significant gains in school adjustment and behavior, and parents improved in parenting behavior, attitudes and knowledge.

The developmental impact of intensive placement programs with drug-using families has not been determined. In a report on such a program in Metro-Dade County, Florida, 58 percent of all families served were involved with cocaine. Yet 76 percent of all families served demonstrated improvement in family functioning at three-months follow-up (Metro-Dade, 1989). At least some cocaine-using families made gains. At least 12 percent of the families served by the Children's Home Society program (Berry, 1990) were identified as having a substance abuse problem. The placement rate among these families was 19 percent, which is higher than average for the program.

Family Reunification

Studies consistently show that children who are returned home have inferior measurable developmental outcomes than children who remain in foster care. Children returned home did not achieve as high IQ scores as those remaining in foster care over a five year period in Fanshel and Shinn's study (1978). Those authors do caution, however, against over reliance on measured outcomes rather than unmeasurable characteristics of the child's emotional experience. Nor did children returned home score as high on adjustment as children in out-of-home placements (Lahti, *et. al.*, 1978). Another study of 187 children either in foster care or at home found that older children (aged 11-16) in their birth homes had significantly lower school attendance than their counterparts in foster homes or group homes (Leitenberg, Burchard, Healy and Fuller, 1981). Older dependent children returned to their birth homes also had significantly more police contact than foster children. Kinard found that "having mothers with emotional problems, as indicated by psychiatric referrals, had detrimental consequences to emotional development of children while being placed away from home did not" (Kinard, 1982). Compared to children given services in foster care, children served at home in Wald and colleagues (1988) study received worse physical care, attended less school, and achieved less in school. Self-esteem improved for both groups whereas social behavior with teachers and peers at school deteriorated for in-home children but not for foster children. Nearly half of the children in both settings still seemed at substantial risk at the end of two years. Even after a caveat that younger children might benefit even more from foster care than the school-age children in their study, Wald and associates conclude that "unless interventions significantly improve parental functioning, children left at home remain at substantial risk" (Wald, *et.al.*, 1988).

Adoption

Evidence on the outcomes of older child adoptions is sparse but generally favorable. Triseliotis and Russell's (1984) findings show no difference between mental health problems of older adoptees and the general population. In Tizard's (1977) study among 30 children placed at two years of age or older, 84 percent had satisfactory progress and attachment capacity more than two years later. In an investigation of transracial adoptions, 78 percent of the children were reported as having problem-free or adequate adjustment (Fanshel, 1972). In a study involving much older children (placed at five to 12 years of age), 85 percent of adopted children made successful adjustments and 73 percent of parents were much more satisfied than dissatisfied (Kadushin, 1970).

Lahti (1982) reports that children placed in homes with new adoptive parents and in foster parent adoptive placements did better in family adjustment and emotional and developmental functioning than did children returned home or in long-term foster care. Children in adoptive placements did especially well in school functioning. However, 62 percent of the adopted children were under three years old when placed. Triseliotis and Russell (1984) also found that adopted children had superior educational attainment than their counterparts in foster or residential care. Another study of 85 special needs adopted children (Berry and Barth, 1989) found these children to have elevated scores on a child behavior checklist regarding aggression, delinquency, and hyperactivity at placement. Families that did not disrupt often witnessed improvements in their children over time. Simon and Alstein (1987) found high educational achievement among adopted children in their longitudinal study. These studies taken together suggest that adoption has positive effects on development of most children in the child welfare population.

Guardianship

To date, developmental outcomes of placement in guardianship have not been investigated. In general, however, guardianship status may facilitate development by protecting a child against return of custody to birth parents when this would harm the child's development in providing a stable environment.

Long-Term Foster Care

Studies of children who have grown up in foster care provide guidance for policymakers and program planners concerned with the welfare of children who remain in foster care until discharged to their own care. Harrari's (1980) study of 34 adolescents who left foster care within five years of entry and were not returned to their foster homes found their self-reports on a personality inventory to be indistinguishable from the general population. Kraus' (1981) investigation of almost 500 former foster children found that time in placement and placement continuity were unrelated to later law violations; no comparisons to children raised in their own homes were drawn. Triseliotis and Russell (1984) found that children raised in foster or residential care grew up to have higher social class than their birth families. Contrary to other studies, Runyan and Gould (1985) found that foster parents reported more behavioral problems of their foster children than did natural parents for children maintained in their own homes (39 percent versus 12 percent). The authors caution, however, that these rates may be higher because of foster parents' increased sensitivity to and awareness of behavioral difficulties.

A follow-up study of 61 former foster children from New Orleans aged 19 to 29 at the time of the interview found that educational attainment was lower than that of the general population in New Orleans or a group matched according to minority status (Zimmerman, 1982). More than half dropped out of school. Students in foster care, on the average, finished less than the eleventh grade. Those with the poorest educational preparation had the most problems as adults. Most (75 percent) members of the sample were self-supporting, although slightly more than one-third lived at or below the poverty line. More than ten percent were incarcerated at the time of the study. Nearly half reported needing or seeking mental health services. About five percent of the sample were hospitalized for mental illness at some time after foster care. A majority of youth appraised their lives as currently satisfactory or hopeful. Consistent with other research (Shostack and Quane, 1988) youth discharged from foster care after a longer stay were more likely to be in the better-functioning group.

Festinger (1983) found no differences between outcomes for her ex-foster children from New York City (and now adult respondents) and the population-at-large on most characteristics including arrests, self-esteem, and happiness. Former foster children did have significant shortcomings in educational and employment success. Continued contact with foster parents or ongoing contact with birth parents during the tenure in foster care were again associated with better outcomes.

A large study of former foster children in West Virginia shows that young people who aged out of foster care after an average of five years in the system have rates of marriage, broken marriages, incarceration, parenthood, and marital satisfaction that are comparable to the general population (Jones and Moses, 1984). Former foster children lagged behind their peers in education by one year and often had problems with alcohol (20 percent). The study also found that 19 percent of the sample's own children were or had been in foster care; this is an exceptionally high rate not found in other studies. Overall, 62 percent were at least "mostly satisfied" with their lives. Most (75 percent) of the former foster children were living with family, including a spouse or partner, foster or adoptive parents, birth parents, other relatives like grandparents or siblings, or their own children.

A more recent follow-up of 55 youth (average age of 21) who left foster care between 1980 and 1988 found numerous difficulties in living (Barth, in press). More than half had not graduated from high school before leaving foster care and 38 percent had not obtained high school equivalence at the time of the study, almost one-third had gone through a time when they either had no home or moved weekly; about two-thirds reported that they sometimes or often worried about running out of money and food; 44 percent indicated a serious illness and 24 percent reported a hospitalization since leaving foster care but just 33 percent had health insurance; 33 percent drank four or more drinks a day or used street drugs more than once per day. The youth in the study reported high levels of depression and 13 percent had been hospitalized for mental illness since leaving foster care.

Fanshel, Finch, and Grundy (1989) reported on children who had, on average, left the exemplary Casey Family Foster Care Program seven years earlier. Their findings indicate that one-third were below age-appropriate school grade levels when entering care and that this proportion was unchanged at the time of departure.

Conclusions can be cautiously drawn from studies on foster care outcomes. Continued contact with foster parents and birth parents improves outcomes for foster youth. Educational and employment deficits are apparently most troublesome to adults who were previously foster children. Housing is a significant problem in many urban areas; an estimated 7500 youth who were discharged from foster care were homeless in New York City (Demchak, 1985). More than one of four (27 percent) children who grew up in foster care and were then questioned as young adults reported severe or moderate housing problems (Triseliotis and Russell, 1984). Criminal behavior and substance abuse are less common, but possibly overrepresented in adults who were foster children.

Whereas exposure to foster care does not doom a child to a distressed adulthood--and often provides the child with beneficial developmental experiences not found in their birth homes-- foster children are still at risk of short-changed futures.

Children and Families' Satisfaction

The satisfaction of children and families should be weighed in decision making. If other outcomes of permanent placements are equal, children's satisfaction becomes particularly salient. Although too little is now known about children's preferences, some data are available.

Placement Prevention

One of the underlying assumptions of permanency planning legislation and practice is that the child's development and emotional well-being is usually best-served when he or she can remain with his or her biological family (with assurance of minimal safety and parenting standards). Therefore, children and parents are assumed to be most satisfied within such arrangements. However, few studies have actually addressed satisfaction with placement as an outcome. Many family preservation programs have measured client satisfaction with services received, and many report high client satisfaction levels (Kinney, *et. al.*, 1989; Lawder, Poulin and Andrews, 1984). Whether this translates into long-term satisfaction with the child remaining in the home after services are withdrawn is unknown.

Family Maintenance and Reunification

Families that received child protective services (CPS) in Iowa were surveyed to determine their perceptions of worker's performance and whether their family life had been made better or worse by activities of the CPS worker (Fryer, Bross, Krugman, Denson and Baird, 1990). Over half the respondents awarded workers the highest possible rating on each of the seven-item scales indicating positive worker qualities (e.g. helpful, efficient, knowledgeable). At least two-thirds of families rated workers positively on indicators of child welfare worker performance. Almost three of four clients (72 percent) believed their family lives were better due to worker's efforts.

In the Oregon permanency planning study, all but one of the children returned home preferred their present home to their foster home (Lahti, *et. al.*, 1978). Most children preferred whatever setting they were in at the time of the interview over their previous setting. A child's perception of permanence in any setting was, however, highly associated with his or her satisfaction across settings. What is not clear is whether the child's perception of permanency results in a successful adjustment to placement. A sense of permanence may also result from a satisfactory placement.

Adoption

In Proch's (1982) study of 56 children adopted by their foster parents, only eight of the 29 children interviewed could distinguish between foster care and adoption. Most of these were old enough to remember living in other foster homes. The essential difference between the two types of placements was stated as foster care being temporary and adoption as permanent. Therefore, to those children who had multiple placements and sought a sense of belonging, adoption was preferable. In Lahti and colleagues' (1978) study, 22 percent of adopted (formerly foster) children defined foster children as not being treated as well as other children.

Kowal and Schilling (1985) report that 17 percent of adult adoptees (placed as infants and later in contact with an adoption agency or search group) were embarrassed or felt uncomfortable about the fact of adoption, and 25 percent reported feeling worried or insecure about being adopted. Still, 21 percent reported feeling differently from nonadoptees but no better or worse, 22 percent reported feeling no different, and 35 percent reported feeling "chosen" or "special." The vast majority (80 percent) of children adopted between the ages of two and ten reported a "fairly positive" to "very positive" response to being adopted (Triseliotis and Russell, 1984).

Guardianship

Legal guardianship may be a preferable alternative for older children who have lived with a foster family or relatives for a long time and do not want to be adopted and cannot go home. Otherwise, children's preference for guardianship has not been studied.

Long-Term Foster Care

Long-term foster care can be preferred by children. In Bush and Gordon's (1982) study of 136 foster children, among 111 children judged unlikely to return home half did not wish to be adopted. Most of these were older children removed at an older age. These children regarded adoption as destructive to ties with their original families. The remaining half were more positive about prospects of adoption citing security of their tenure in placement and the wish to belong to a real family.

Fewer than half (43 percent) of children in the West Virginia study reported they were treated differently than other children because they were in foster care (Jones and Moses, 1984). In Fanshel's (1982) study, social workers rated foster children--who had been in care at least one year and an average of five years-- as significantly more attached to their foster homes than their birth homes. Few younger children experienced a conflict in attachments-- more older children did. Children living in institutions felt less comfortable, not as happy, less loved, less looked after, less trusted and less cared about than children in other forms of surrogate care or children reunified with their families (Bush, 1980). Children who had some choice in their foster placement were significantly more satisfied in their placements than were children with no choice (Bush and Gordon, 1982). The aforementioned sample of young adults who left foster care in Northern California between 1980 and 1988 generally indicated that foster care was a positive experience and 78 percent reported their lives were somewhat or much better as a result of having been in foster care (Barth, in press).

Conclusions

The statute-ordered priority for family maintenance and reunification over adoption over guardianship over long-term foster care clearly reflects society's respect for the abused and neglected child's right to have a family life that most closely approximates that of other children. Child welfare service providers generally concur that ideal family life is free from abuse, lifelong, generates developmental advantages, and is desirable to the child. Intensive family preservation services and special needs adoption appear to be the most promising developments of the last decade, but emergence of homelessness and drugs as two major influences on children entering the child welfare system suggest that these two programs face great challenges in preserving birth and adoptive families. Difficulties in meeting these challenges are expressed by the rise in foster care in the last two years. The difficulties adoption agencies will increasingly face in making and keeping adoptions for drug-affected children is just beginning to be apparent.

Of all placement options, conventional family maintenance services or reunification with birth families as they presently operate fail most often to be free from abuse and to yield developmental well-being. The right of children to receive the care of their biological parents and the right of parents to have custody and control of children born to them is, nonetheless, basic to the organization of American society. No amount of research can or should alter society's commitment to the parent's right to care for his or her children. Given that commitment, the policy implication of findings that family maintenance and reunification too commonly risk children's well-being is to provide more intensive and lasting support to children in their own homes. Family preservation has been the ideal of child welfare services for a century. Yet we ironically provide only a few months of services to families who have clearly shown long-term difficulties in meeting the challenges of parenting.

Placement Prevention

Current evidence on the efficacy of intensive preservation consistently show that programs are effective in preventing placement for the vast majority of families served, and that parents can make substantial gains in parenting skills and environmental conditions for the family. Such gains are impressive, given that services are provided for only eight to 12 weeks and that families are usually at high-risk for imminent child placement. Most families are still intact a year after services. Evaluations of family preservation programs stop short, however, of showing their long-term benefits for children or the lasting stability of family units where placement was averted. Efforts to prevent placements among violent and heavy drug-using families may promise as much danger to the welfare of children as benefit. Continued research on the ability of such efforts to produce change in the child's environment that lasts across years is needed. Innovations that combine various lengths and intensities of family preservation with less intensive family maintenance follow-up services are badly needed.

Family Maintenance and Reunification

Given data on difficulties experienced by children reunified or cared for in their own homes, interventions that only prevent reabuse for the brief time that such cases are open are inadequate. To lower the number of children in foster care by moving children who cannot go home into other permanent situations and by returning children to homes that are safe and will remain safe are two humane and efficient solutions to foster care drift. But, leaving children in homes that are not safe or returning children to homes that are not safe or will not be safe is neither humane nor efficient. Instead, child welfare services should move quickly to seek policy and program changes to reallocate resources and provide additional services for families beyond the point of placement prevention.

More intensive and lasting services to children at home are indicated. Time limits developed for P.L. 96-272 to govern child welfare services were primarily established to reduce foster care drift by forcing child welfare agencies to decide on a permanent placement in a timely way. Time limits were chosen with guidance from research showing the drop off in reunifications after 18 months. Use of such time limits for in-home supervision has no equivalent empirical basis and merely corresponds to those for out-of-home care. Indeed, justification for such time limits appears to arise from concern about agencies' resources and families' rights to privacy. Data presented in this review argue for extended time limits for cases supervised in-home or that involve return of children from foster care. Available data suggests that pre-placement services are often inappropriately brief, given the tenacity of family problems and high reabuse rates. The weak and even inverse relationship between time of case closing and improvements in family functioning fail to justify such brief pre-placement services. Other evidence also indicates that services to children who have been reunified are often inadequate and end prematurely (Ten Broeck and Barth, 1986). Ferleger and colleagues (Ferleger, Glenwick, Gaines and Green, 1988) found reabuse was more likely when parents received fewer than six months of treatment. The findings of Johnson and L'Esperance (1984) and Jones (1977) suggest that greater provision of services to families that are reunified will help prevent abuse and replacement. Current permanency planning time limits work against such efforts and make reunification a risky business for children by returning more children home with shorter periods of less supervision and service.

Longer service periods, two and even three years, for example, of supervision and in-home services for reunified families deserve more testing. Administrative or statutory changes will be needed. Semi-annual administrative and judicial placement reviews might be required for two years after placement. (After two years, the agency would have to demonstrate the need for continued supervision at six-month reviews.) Such support may help some families avoid reabuse. Clinical research from other endeavors to help troubled families indicates that changes in child and parent behavior do not last unless supported by changes in family skills and social environments (Wahler and Dumas, 1984; Whittaker, 1985). Some evidence indicates that simply keeping reunified cases open longer with limited services may lessen reabuse (Johnson and L'Esperance, 1984). Such services would be less costly than foster care.

Critical to implementation of the longer service period is addressing policy makers' concern about the family's right to resume their roles without state interference once the state acknowledges the child is temporarily safe at home. Evidence from Iowa that clients appreciate agency efforts to prevent placement should allay such concerns. This notion neglects evidence that children who have been injured or endangered are very often not safe at home even after reunification and case closing. Such a position endangers child and birth parent rights by giving too little recognition to the steep cost to birth families and children if reabuse leads to permanent loss of custody.

Other service changes are needed. As Wald and colleagues have argued, children who are court dependents--whether at home or in foster care-- deserve full psychological, physical, and educational assessments (Wald, *et. al.*, 1988). These assessments can guide the delivery of services during the extended service and supervision period. Child welfare services would endeavor to contribute to families' capacities to fulfill and remediate children's deficits as identified in the assessments. Recent trends away from use of foster care underscore the seriousness of reassessing in-home services and reunification. Children who have been abused or neglected and remain at home or are returned home after a brief time in foster care are the next great challenge in child welfare. Given that services to families in their own homes are less costly than out-of-home care and more precisely aimed than child abuse prevention programs, funding for additional and extended at-home services should be a priority. This is not the same as increasing intensive placement prevention services. Each is necessary.

Adoption

Adoption of older children under permanency planning appears to be a highly favorable form of placement. Fears that adoption disruption rates are skyrocketing under permanency planning are unfounded. Positive developmental outcomes of adoption and children's satisfaction with it seem, on the whole, consistent with current impressions and policies. Improved assessments and reconceptualized post-placement services may further these positive outcomes (Spencer, 1985).

As preparation for adulthood becomes more complex and the period of dependency on adults lengthens, benefits of adoption over temporary foster and group care arrangements are accelerated. A child adopted at eight years old may depend on assistance with housing and education for 20 years-- the comparable foster child has only half that long to benefit from parental support. The difference in financial family benefits to the child adopted into a low-income family versus a similarly situated foster child approaches $300,000 across their lifetimes (Barth and Berry, 1988). This familial investment in a child yields a significant return to society, as well, and deserves promotion through considerably more support for recruitment and placement. Subsidies have also proven to help stabilize high-risk placements (Barth and Berry, 1988). All parties to a special needs adoptions invest great hope and effort-- this investment also warrants the protection of intensive family preservation services, which have heretofore been rarely available to adoptive families.

Guardianship

So little is known about guardianship that potential changes are difficult to evaluate. Though research is obviously needed, simple and immediate strategies need not wait. To start, more general access to guardianship subsidies are warranted (Leashore, 1984). Without subsidies, some jurisdictions are granting guardianship while maintaining dependency to ensure adequate financial resources for the child. This contradiction may weaken guardians' commitment to providing permanent placements. Subsidies help foster and adoptive parents manage daily and special expenses of caring for hard-to-place children; guardians deserve no less. After such adjustments are made, guardianship's stability and durability beyond adolescence should be assessed. In any case, we expect that use of guardianships may decline as child welfare agencies (1) reduce the numbers of children with long relationships to foster parents in accordance with recently instituted time limits; (2) use foster parent adoptions and legal-risk adoptions; and (3) become more familiar and comfortable with terminating parental rights.

Long-Term Foster Care

Permanency planning legislation has reduced the most flagrant problems of child welfare-- children unnecessarily resigned to long term and unstable placements. The number of children in out-of-home care has risen only two percent per year since 1980. Yet the likelihood of obtaining desired outcomes of reunification and adoption decreases as children get older. Some children "grow out" of the primary options of reunification and adoption. For older children, particularly adolescents, guardianship and long term foster care may provide the least restrictive alternatives because they allow more ready access to birth families.

Foster care, the recent whipping boy of child welfare services, appears to offer considerable developmental advantages to children. Children in foster care often regard it favorably and sufficiently permanent. Our review reinforces conclusions of the early Oregon Permanency Planning Project: "Generally we have not found foster care to be characterized by unstable placements affording children limited chance for satisfactory adjustments" (Lahti, *et. al.*, 1978). Unless additional efforts-- especially higher care payments and more supportive services like respite care-- are made to recruit and maintain quality foster parents, however, the risk of poor placement outcomes will increase.

The notion that long term foster care is antithetical to permanence must also be further considered. If permanency planning is intended to provide life-long families, then reunification and adoption seem to be far-and-away the most preferred options. Yet evidence strongly suggests that long term foster care does not preclude lifelong attachments. Jones and Moses (1984) demonstrated that more than half the children who left long-term foster care before age 18 relocated their birth parents and lived with one of them during their first post-foster care placement. For those who left after age 18, one in three continued to live with foster parents. Only a fourth of the children reported that one or both birth parents were dead or could not be located. Many foster children maintained contact with their siblings. Children who have been in foster care for several years are still likely to turn to birth families or relatives after discharge from foster care (McDermott, 1983). Before we can ascertain the lifelong permanence of placements, additional and longer follow-up studies on children who entered long-term foster care under permanency planning are necessary.

Summary

Child welfare policy makers must insist that permanency planning's primary goal is to create living situations that endure for a lifetime. Maluccio and Fein (1983) argue that permanency planning is designed to help children live in families that offer continuity of relationships with nurturing parents or caretakers and the opportunity to establish *lifetime* relationships (italics added). A more limited and too widely accepted perspective is that "Permanency planning describe(s) a number of services and programs delivered in behalf of children--who are either at risk of being removed from their families of origin or who are in out-of-home placement--in the effort to secure for each child a caring, legally recognized, continuous family in which to *grow up*" (Cole, 1985; 1, italics added). Because permanency planning should be viewed as a set of services and options to provide "lifetime relationships" rather than a "continuous family in which to grow up," weighting of service options must correspond. With greater support for long-term foster care and guardianship, these placement options can provide stable, safe, and beneficial places in which to mature. Long term group and residential care pale in comparison. Family maintenance and adoption stand the best chance of securing lifetime relationships-- the goal of permanency planning. The time-limited and meager services now available for special needs adoption, guardianships, and family maintenance and reunification can only be viewed as unmistakably shortsighted.

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CHANGING NEEDS, CHALLENGING CHILDREN

by Judith Anderson
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Characteristics of Children in Care

Good, reliable, comprehensive national data on children in foster care and in need of adoption services is hard to come by, but all that does exist indicates that today's "system children" are different from those of 1980, when P.L. 96-272 was signed into law. Conversations with child welfare and adoption specialists-- based on experience, anecdotal information, limited statistics, and "gut feelings"-- reveal a younger population, more damaged children, more sibling groups, more multiple placements, and kids with greater education and mental health problems. Dr. Penny Maza, with the U.S. Department of Health and Human Services Children's Bureau, calls this new population reflective of the worst cases in foster care.

Michael Weber, director of community services for Hennepin County in Minnesota, testified before a Congressional committee in June 1989 that the child welfare population now is significantly different than what we had when P.L. 96-272 was being conceptualized. "Our older kids in care look demographically and characteristically like many of the homeless adolescents we're seeing on the streets." He called it "more an accident of history that some kids happen to be on the streets rather than in foster care as adolescents." Weber said the number of children in this county's foster care system is increasing, and "the kids we're seeing are more disturbed and present different challenges."

The kids are younger and the numbers are up. Some attribute the rising population of foster children to increases in abuse and neglect (both in actual cases as well as improved reporting systems). According to the National Committee on Prevention of Child Abuse, there were 1,000,800 reports of child maltreatment in 1983-- and 2.4 million reports in 1989. And a new population of medically fragile infants-- in increasing numbers-- is impacting the age curve downward. Of the children photolisted by the Massachusetts Adoption Resource Exchange (MARE), the average age for boys in 1980 was 9.8 years, 9.5 for girls, and 7.7 for siblings. In 1990, the average age for boys was 7.7, 8.1 for girls, and 7.5 for siblings.

Staff at Spaulding for Children in Detroit, Michigan say the profile of today's child in need of adoption is an eight to ten year old Black male child, who has experienced multiple placements and has problems with school. That profile ten years ago was of a a 12 to 16 year old child.

In New York State, children aged four or younger entering care for the first time more than doubled between 1984 and 1988. In New York City, during the same time period and in same age range, the number tripled. In fact, in 1988, children aged four or younger made up 52 percent of all children entering care in New York City. (Wulczyn *et. al.*). More than 1600 of the city of Philadelphia's 5400 children in foster care are under the age of five-- a 98 percent increase since 1985 (*Philadelphia Inquirer,* December 27, 1989). Staff at Catholic Social Services there say the drug epidemic is "just wiping out the foster care system" and they are seeing "a whole population where children are virtually abandoned-- and that is new."

The metropolitan Washington, DC area (the District plus Alexandria, four Virginia counties, and two Maryland counties) had 3,412 requests for foster care placements in 1989, for children entering or re-entering the system-- a 15 percent increase from 1987. The number of infants and toddlers entering the system increased significantly: there was a 40 percent increase between 1987 and 1989 in the number of children aged 23 months or younger entering, and a 26 percent increase in the number of children aged two to five entering during that period (Metropolitan Washington Council of Governments, 1989).

A study released by Citizens for Missouri's Children in 1989, covering fiscal years 1985 through 1988, indicates increasing numbers of Missouri's children are being placed in more restrictive and costly settings and younger children are placed outside their homes more frequently than older children. During the study period, the Missouri Department of Family Services (DFS) had a 25 percent increase in the number of re-entries into care-- one out of every four children entering placement had been placed outside their homes before. An average of almost 46 percent of these Missouri children with multiple entries spend more than two years in care compared to an average of over 35 percent for all children in care. In fiscal year 1988, 60 percent of all DFS children spent more than one year in placement. Half of all children entering the DFS placement system are six years old or younger.

The U.S. House Select Committee on Children, Youth, and Families released a report in December 1989, called *No Place to Call Home: Discarded Children in America.* The report states 42 percent of the children entering foster care in 1988 were under age six, compared to 37 percent in 1985. Between 1983 and 1985, the number of children placed into care more than once nearly doubled, from 16 percent to 30 percent, and the percentage of children in care more than two years remained relatively unchanged at 39 percent.

Up to 60 percent of California's drug exposed infants have been placed into foster care, according to the Select Committee report. In Illinois, the number of infants requiring out-of-home care because of substance abuse related reasons increased 132 percent from 1987 to 1988. In a nine-month period in 1989, 71 percent of the infant referrals to the New Jersey Department of Human Services, Division of Youth and Family Services, needed specialized care. Of those babies, 65 percent were substance addicted and nine percent were HIV-positive (State of New Jersey, 1989).

Foster Care Population Rising Again

In 1977, there were an estimated 502,000 children in foster care in the United States. That number dropped to 243,000 in late 1982, rose to 276,300 in 1985, and rose again to 340,300 in 1988. According to data highlighted in the Select Committee report, from 1980 to 1985 the foster care population declined nine percent, in contrast to an estimated 23 percent increase between 1985 and 1988.

Some researchers believe the decline in numbers the first few years after passage of P.L. 96-272 can be attributed to "left-over kids," the backlog of children in the system when the law was passed. The law indeed made a difference for these youngsters, as they were "moved out of the system" in the early stages of implementation. Other observers believe it's reasonable to assume that some system improvements are attributable to *anticipation* that federal level legislation would pass. Legislation that ultimately became P.L. 96-272 had actually passed both the House and Senate the previous session. Some states and local jurisdictions initiated changes or improved existing statutes before being mandated to do so in expectation of the federal law's passage (United States General Accounting Office Report to Congressional Requesters, 1989).

The National Census Bureau estimates that between 1980 and 1990 the number of young children entering foster care increased by 17 percent, and the adolescent population decreased by 14 percent. The foster care population in Illinois remained fairly constant between 1975 and 1986, but swelled in 1987 and 1988 (Wulcyzyn, George, and Smith, 1989)-- primarily because Black children were entering the system in disproportionate numbers. Between 1977 and 1988, the number of Black children aged four or younger entering care more than doubled, while the number of non-Black children in the same age range increased only modestly.

In 1985, minority children comprised 41 percent of those in foster care across the country. That figure rose to an estimated 46 percent in 1988-- more than twice the proportion of minority children in the nation's child population. Black children remain in the system one-third longer than white children (House Select Committee report, 1989).

In 1989, the National Black Child Development Institute released results of a two-and-a-half year, five city study on Black children who came into the foster care system in 1986. The project found that escalating numbers of Black children are entering foster care at even younger ages and remaining in care for longer periods of time because of dramatic discrepancies between needs identified and services provided. From the report's executive summary:

> The study demonstrates that the state of foster care has not improved significantly despite more than a decade of intense agency efforts and national efforts of reform. Conditions for a new generation entering care are identified by the study, and these children are failed in the same respect as their predecessors were ten and twenty years ago (*Who Will Care When Parents Can't*, National Black Child Development Institute, 1989).

Foster and Adoptive Parents

Again, it's hard to come by clearly documented national data, but adoption professionals are seeing a tremendous increase in the number of foster parent adoptions. Roughly 60 percent of all special needs adoptions in this country appear to be such "conversions." In 14 of 17 states studied by the Office of the Inspector General of the U.S. Department of Health and Human Services in 1984, foster parent adoptions accounted for almost 50 percent of finalized adoptions. In a July 1988 report, that office indicated that 61 percent of all minority adoptions were by foster parents. Availability of adoption assistance and stronger emphasis on continuity and stability for children certainly have contributed to this increase. Foster parents wanting to make a permanent, legal commitment to a child in their care can now retain a certain level of financial support-- although for children with severe special needs adoption assistance is frequently far below foster care rates. The reality of not having to make another move once they become legally free is an important stability and permanence issue for children. The foster family has lived with the child, knows his or her history, is already familiar with behaviors and characteristics, and is likely to have a different level of expectation of family dynamics than a "new" adoptive family. Richard Barth and Marianne Berry, in their 1989 book *Adoption and Disruption: Rates, Risks, and Responses,* found that 94 percent of foster parent adoptions succeed, compared to an overall success rate of 90 percent for all special needs adoptions.

If foster care is supposed to be temporary, but 60 percent of our current adoptions are by foster parents, we obviously need to rethink the way we've been recruiting, labelling, training, and supporting both foster and adoptive parents. Agencies are now looking at foster parents as "more than temporary placements" and in fact are encouraging foster parent adoptions when children become legally free. Some states--Kentucky in particular--have developed programs to jointly recruit and train foster and adoptive parents. In many places, foster parents receive far better training and preparation for the critical issues faced by children in substitute care-- separation, loss, identity, grieving-- than adoptive parents, who will be dealing with these issues over a far longer time period and are expected "to be there forever for their child."

Given the kinds of children in need of substitute care and adoption services, we need to rethink the kinds of families we look to for provision of such care. The supply of foster homes has not kept pace with demand and it's tough to recruit foster parents when reimbursement rates are far behind inflation. Between May 1989 and May 1990, the number of children placed in St. Louis City foster homes increased by 20 percent, but the total number of foster homes in the city increased by only two percent (*The Children's Chronicle,* summer 1990). According to a study released this year by the American Enterprise Institute and the American Public Welfare Association, average yearly pay per child in care is $4000, but it actually costs about $8000 to support a foster child--$20,000 if the child has several medical needs, and more if institutional care is required. No vacation or sick leave, no fringe benefits, a 24 hour workday, and 365 workdays per year-- to care for someone else's child, to work essentially as a volunteer.

Use of therapeutic foster homes--more cost-effective and nurturing than residential treatment--is increasing, but things are only going to get worse unless we look at foster parenting as a professional service, a valued service that's in the best interest of us all. That means appropriate screening and evaluation, extensive training and support, and certainly decent wages and fiscal incentives. Not enough of the nation's approximately 125,000 foster parents have the skills to cope with today's more damaged children. The system is on overload, says David Leiderman, executive director of the Child Welfare League of America. Things have changed, he says, "the traditional foster family is not equipped to deal with these kids." Institutions are too frequently used, not because they're appropriate for the child at that point in time but simply because beds are available.

But creative approaches do exist. In New Jersey, the Department of Human Services, Division of Youth and Family Services, teaches specially recruited foster families how to care for medically fragile children. Families receive a flat monthly rate of $500, paid for up to three months, to guarantee space in their home for a maximum of two special needs infants. Care rates increase when a child is placed into that home-- $900 to $1200 depending on the severity of the child's medical needs. Additional services like respite or babysitting, reimbursement for travel related to medical care and homemaker assistance are also available. Families receive extensive pre-service plus regular in-service training, child and disease-specific training, and agree to be the child's primary caregiver and restrict work outside the home.

In Detroit, the Living in Family Environments (LIFE) program recruits and trains families who have been receiving public assistance, takes them off assistance and these families then provide care for special needs children-- older kids, physically and mentally disabled kids, those who would otherwise be institutionalized. Foster families receive $22,000 per year plus medical benefits, respite, targeted training, and obvious enhancement of self-esteem and worth in the community.

Granted, programs like these are small-scale, but they're a start. And they're a break from recognizing only "traditional families" as resources for children. The same must be true for adoption, for those children who won't return to their family of origin and who deserve better than "floating through foster care." Adoption *has* change -- more "non-traditional" families are adopting and P.L. 96-272 has focused attention on children once considered "throwaways" and "unadoptable." But these youngsters, given the kind of physical and emotional hurt many have endured, may be tough to parent. An eight year old child whose experienced as many as a dozen moves, some back home and multiple moves within the foster care system, is NOT unusual; the child who's never spent enough time in any one place long enough to develop a sense of family and trust has incredible obstacles to overcome. These are our nation's damaged kids. Adoption doesn't simply "fix" them.

Post-Legal Adoption Services

Adoption is more than referral and placement of a child and more than a legal procedure. It is a lifelong process, and services to families-- to sustain families and their adoption-- may or may not be needed at different times. These services should be available, accessible, timely, and appropriate, not just in theory but in active practice. "Love is not enough" is a rallying cry of adoption advocates, and many families recontact agencies years after adoption finalization, sometimes in crisis, seeking services and support. A national task force on post-legal adoption services, created in 1983, arrived at the position that "agencies have a responsibility to the families and children they have brought together that goes beyond the legalization of the adoption." Foster parents who adopt special needs children who have been in their care come to expect access to the same services they received while foster parenting-- they move from "temporary" status to "permanent," but the child is the same, with the same history and same dynamics. And the same risk of need for assistance.

The least intimidating services are support groups-- empathic ears and shoulders on which to lean. These groups are providing warmlines, education, networking, resource assistance, and affirmation that adoption DOES work. Families need mental health professionals trained and experienced in adoption and foster care issues-- and whose services are covered by Medicaid and subsidy reimbursement. They also need agency assistance negotiating the system and its bureaucratic barriers, respite care, family counseling covered by subsidy (not just counseling for the adopted child-- adoption is a *family* dynamic), financial assistance for short-term residential care and day treatment programs, and elimination of the stigma of coming back to the agency for help. Preparation of the family for adoption prior to placement is an important element in the level of success as well, and should be considered a significant point on the continuum of services to adoptive families.

Adoption assistance provisions in P.L. 96-272 are a critical element in post-adoption services. For many families, it's been the factor that has allowed them to support and parent their child. As the profile of the child in need of adoption is changing, child welfare and adoption practice need to keep pace. Strengthening adoption subsidy, recognizing the unique needs of our kids, acknowledging that today's children in foster care do have serious problems that don't just go away when an adoption decree is signed--and affirming that *adoption* didn't cause those issues, and establishing firm public policy on post adoption services are essential. Signing a legal document attesting to the adoption doesn't automatically guarantee permanence and stability to the family. The very factors of separation, loss, identity, multiple family experiences, and the potential for social and behavioral difficulties places the adopted child and his or her family at some risk.

Right now the only direct federal post-adoption support--specifically, post-LEGAL support--is through individual negotiated adoption assistance contracts. Federal regulations do allow coverage for a range of services under these subsidy agreements. The problem is that many families are not aware of these provisions, do not know what questions to ask, may be reluctant to demand services to which they are entitled, and many adoption workers are unfamiliar with what is allowable under subsidy. Additionally, families would certainly benefit from general services available through Title IV-B or administrative categories under Title IV-E of the federal law. A few states have allocated dollars for broad programs and program development, but there's no federal level incentive in the area of post-adoption services. If the intent of P.L. 96-272 is permanence for all children, post-adoption services should be given the same priority as prevention and family reunification. Post-adoption services indeed are family preservation services. And we should be focusing on post-*placement,* not just post-legal needs.

Innovative models and policies do exist. Several states have amended their subsidy statutes to include respite care and family counseling. New Jersey has established post-legal adoption service centers around the state, funded with public dollars. Illinois is in the process of developing a strong public policy on services, funding, and state-level leadership and uses a Post Placement Services Assessment Guide to determine the level of need and assess necessary intervention. Minnesota recently hired a post-legal adoption services specialist. In 1986, Massachusetts funded a detailed survey of existing post-adoption services, the most pressing needs for services, and recommendations on meeting those needs (*Preserving Permanence: A Survey of Post-Adoption Services in Massachusetts,* Lauren Frey, Project Impact, 1986). A statewide task force developed a plan, and the Department of Social Services initiated a small-scale case management program with a therapeutic component in fiscal year 1989.

A wide range of curricula and model service programs--many being used by parent support organizations in collaboration with agencies or community mental health centers-- have been developed and are in use. The National Resource Center on Special Needs Adoption is completing a home-based post-adoption training package specifically targeted to urban Black adoptive families. Another curriculum, video-driven and including family assessment, family preparation, and post-adoption services, will be available fall 1990. The Center also produced a 30-second public service announcement aimed at families who might not yet have sought help but are likely to need it.

Lauren Frey, author of the 1986 Massachusetts survey on post-adoption services, puts strong emphasis on preservation of permanent family ties:

> For those children whose birth families were unable to raise them, adoption has been identified as the optimal way of assuring them continuity in a family. But adoption is only the means, not the end. If we are truly committed to permanence, then we are also committed to post-legal adoption services. If we are truly committed to permanence, then there is much work to be done.

The Next Decade

The foster child of the 90s will be more traumatized by neglect and abuse and by multiple moves. More adopters will be former foster parents. Funding and policy development-- out of touch with the reality of the 80s-- have got to get better if kids are ever to get what they deserve. We must make tough decisions, take some risks, put up adequate dollars, and truly deliver on our commitment to "children as our greatest natural resource"-- whether those children remain with their birth families, are in substitute care, or are part of families through adoption.

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TEN YEARS LATER: IMPLEMENTATION OF PUBLIC LAW 96-272 BY THE COURTS

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Background and Purposes of Public Law 96-272

Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980 (Social Security Act 420-427, 471-479a), was ambitious and far reaching legislation. It was designed to move child welfare practice beyond merely "rescuing" maltreated children from unhealthy home environments. That is, without diminishing efforts to protect maltreated children from abuse or neglect, P.L. 96-272 was designed to assure that maltreated children are provided a stable, permanent, and safe home.

More specifically, P.L. 96-272 was designed to overcome unplanned use of foster care by child welfare agencies. Thus, it sought to prevent children from being needlessly removed from their homes and placed into foster care, to prevent children from being repeatedly moved from foster home to foster home, and to prevent children from being left in foster care for long periods of time, never knowing when they might be removed from their present placement. At the same time, it sought to assure quality and safety of foster placements. The Act addressed all of these goals by creating a comprehensive set of requirements and fiscal incentives for states to induce far reaching reforms in foster care practice (Allen, Golubock and Olson, 1983; Hardin, 1983).

Several parts of the Act call upon courts to perform specific steps in cases involving maltreated children. The courts must take these steps if state child welfare agencies are to receive federal foster care funds. Specifically, the Act requires that:

- Courts explicitly determine whether the child welfare agency has made "reasonable efforts" to prevent placement of each foster child and to return the child home;
- Courts approve any voluntary, nonjudicial foster placements within 180 days after the original placement;
- Courts, agencies, or citizen review boards review the case of each child in foster care at least once every six months;
- Courts or "administrative bod[ies] appointed or approved by the court[s]" hold a hearing no later than 18 months after the placement and periodically thereafter to determine the permanent placement arrangement for the child; and
- Procedural safeguards be provided for parents when children are removed from the home or are moved into different foster homes. (Social Security Act 472(a)(1), 471(a)(15), 472(e), 475(5), (471)(a)(16), 427(a)(2)(B)).

In adopting these requirements, Congress envisioned the courts helping to effect reforms the Act was designed to accomplish. This reflected the value placed by the Congress upon meticulous and impartial decision-making procedures and the Congressional assumption that the court process is central and essential to efforts of caseworkers and service providers.

Implementation of P.L. 96-272 by the Courts

The quality and impact of the courts' implementation of P.L. 96-272 have been uneven. While improvements in judicial proceedings have been an important factor in successful foster care reforms, full judicial implementation of P.L. 96-272 has not occurred in most places.

Provisions of the Act calling for judicial action have had a powerful and positive impact on child welfare practice in several ways. First, by inducing courts to review agency efforts to assist families in order to prevent the need for foster care, the Act has helped avoid unnecessary placement of many children. In reviewing agency efforts to prevent placement, courts have sometimes discovered that further services would make it possible to safely prevent placement. Other times, in the process of reviewing agency efforts courts have more closely examined the nature of underlying problems and decided they are not serious enough to merit state involvement. Still other times agencies have made more vigorous efforts to prevent placement, knowing the courts would review their efforts and that receipt of federal matching funds hinges on favorable judicial determinations.

Second, by causing courts to periodically monitor agency case planning and decision making, the Act helped avoid many inappropriately lengthy placements. This has sometimes happened because the court has successfully pressed for the child's return or sped proceedings to legally free the child for adoption. In some cases, the very existence of the court review has stimulated case workers to take additional steps to avoid judicial criticism or interference.

On a more subtle level, the time and effort involved in periodic court review has created disincentives to casually placing or leaving a child in foster care. Continuing foster placement is no longer the path of least resistance that it was prior to P.L. 96-272. That is, judicial review has made it harder for workers to leave a child in care and thereby encourages them to achieve another permanent placement.

Third, by making the courts oversee early agency efforts to rehabilitate families, the law has made many judges more willing to legally free children for adoption under appropriate circumstances. When courts oversee early agency efforts to preserve families and induce them to make their best attempts to do so, and when such efforts are unsuccessful, courts are often more willing to terminate parental rights. This is because a successful termination of parental rights generally requires evidence the agency made appropriate and diligent efforts to preserve the family.

If the court approves agency efforts to help the family as the case moves along, yet parents fail to improve, it is less likely a judge will refuse to terminate parental rights because of agency failure to sufficiently assist the family (Plum and Hardin, 1983). Many children have remained in foster care when, after an agency has already worked with a family and then decided to try to free the foster child for adoption, the judge has found agency efforts to help the family were inadequate or inappropriate and has ordered the agency to revamp its efforts to help the family. It is far more helpful to the child and family for this type of judicial scrutiny to occur early in the case.

Fourth, as the result of jointly struggling to implement the Act, many courts and agencies have begun to work together more closely and to develop a more coordinated decision-making process. Inconsistencies between judicial and agency decision making have been reduced, resulting in smoother and more expeditious planning for children. In sum, court-related provisions of the Act have made an important and valuable contribution toward better planning for children in foster care.

In spite of impressive gains occasioned by court-related provisions of the Act, fully effective implementation has not occurred in many parts of the United States. In many places, good progress has been made in terms of superficial compliance with the Act, *i.e.*, making sure that court orders recite the necessary language to comply with federal law. However, too often language does not reflect a meaningful judicial deliberation. This is true with regard to each of the principal court related reforms: judicial determination of reasonable efforts, 18 month hearings, six month case reviews (where conducted by courts), and other mandated procedural protections.

Implementation of the Judicial Determination of Reasonable Efforts

The required judicial determination of reasonable efforts is designed to help avoid unnecessary removal of children from their homes. To accomplish this, courts are called upon to take an extra step when deciding whether to allow children to be placed into foster care. That is, they are called upon not only to decide whether parents have maltreated the child severely enough to require state involvement but also to carefully determine whether the child welfare agency has made "reasonable efforts" to help the family and thus to prevent placement.

The reasonable efforts determination adds a whole new dimension to the decision whether to place the child into foster care. The court is to consider not only danger to the child, but also how the danger might be alleviated so placement will not be necessary. Review of agency efforts to prevent placement is also supposed to encourage strong services and casework to assist families, because a positive judicial determination of reasonable efforts must occur for agencies to be eligible for federal matching funds for a particular child (Ratterman, Dodson and Hardin, 1987; Ratterman, 1987; National Council of Juvenile and Family Court Judges *et. al.*, 1988).

In reality, court practice varies widely regarding reasonable efforts determinations. In some states, courts and agencies have taken a cynical approach, seeking to assure receipt of federal funding without the court taking a meaningful look at reasonable efforts. In such states, words indicating the agency has made reasonable efforts are preprinted into court order forms used when removal of a child is authorized, and laws are structured so a judge cannot authorize a foster placement without a positive finding of reasonable efforts. In such states, even if a judge concludes agency efforts to prevent placement have been inadequate and the situation has been allowed to deteriorate to the point where the child does require immediate placement, the judge must enter a finding that the agency has made "reasonable efforts" to prevent placement in order to legally place the child in foster care. At present, the federal government considers such state forms and laws to be in full compliance with P.L. 96-272.

In many other states, court forms call upon judges to check off whether or not the agency has made reasonable efforts to prevent placement. The judge need not make positive finding of reasonable efforts in order to authorize foster placement. In practice, however, judges may not consistently make a thorough determination regarding reasonable efforts when making a foster care placement decision.

On the other hand, there are courts that have established specific procedures to assure agency efforts to prevent placement will be systematically and thoroughly addressed. For example, Mecklenburg County, North Carolina, adopted explicit court rules on procedures ensuring a careful review of reasonable efforts (Local Rules, 1990). Extensive practice guidelines have been established for the same purpose in the San Francisco Bay Area (San Francisco Superior Court Juvenile Division, 1990; Bay Area Reasonable Efforts Project, 1990). Similarly, many individual judges consider reasonable efforts determination to be a fundamental element of their responsibilities as juvenile court judges.

The National Council of Juvenile and Family Court Judges, with assistance from the Edna McConnell Clark Foundation, has worked to develop "model courts" demonstrating appropriate methods to implement reasonable efforts requirements. These courts have made special efforts to implement reasonable efforts requirements systematically.

Implementation of the 18 Month Hearing

The required 18 month dispositional hearing is designed to prevent unnecessarily lengthy foster placements. To accomplish this, courts are called upon to conduct a rigorous hearing to reach a firm long-term decision for the child no later than 18 months after that child's original out of home placement. That is, within 18 months after placement the court is to decide whether to return the child home, to legally free the child for adoption, or to authorize some other permanent placement arrangement. Extensions of regular foster care are permitted only in special circumstances (Dodson, 1984).

The 18 month hearing requirement was based on social science research. Research indicates that children in foster care who are not returned home within 18 months of placement are unlikely ever to go home. Because such a profound decision should not be made by default, Congress concluded there should be a thorough decision making process before foster care goes beyond 18 months (Dodson, 1984; Allen, Golubock and Olson, 1983).

Judicial practice regarding implementation of the 18 month hearing requirement also varies sharply. In a few parts of the country, 18 month hearings are neither conducted by the court nor conducted as a formal hearing. While P.L. 96-272 permits the court to approve another body to conduct the 18 month hearing, the law contemplates a precise hearing process (Dodson, 1984; Allen, Golubock and Olson, 1983). Nevertheless, the federal government has allowed courts to authorize agencies to review themselves, without any process resembling a hearing as the term is understood in the judicial process.

In most places, however, the 18 month hearing is conducted by the court. When the hearing lacks rigor and decisiveness, a primary problem is that some courts confuse the purpose of the 18 month hearing with that of the six month review.

That is, many courts treat the 18 month hearing as a routine review of the child's foster placement and readily grant extensions of foster placement without requiring systematic proof that other options are inappropriate or impractical. Many state statutes and court rules implementing the 18 month hearing requirement establish the hearing as a simple and routine review of case progress.

Some courts do not set aside enough time for an actual hearing, thus compounding judicial misunderstanding of the nature of an 18 month review. It is not unusual for courts to complete the 18 month "hearing" in a few minutes, even if parties are not in full and explicit agreement. Yet some of the same courts that conduct such perfunctory hearings do not consistently complete them within the required 18 months.

Even in some of the courts where dispositional hearings are conducted with relative rigor, there can be substantial delays in legal proceedings to achieve permanency for children. Where the 18 month hearing concludes the child should be legally freed for adoption, a separate and time consuming proceeding to terminate parental rights generally must be brought. The termination proceedings must be initiated in a different court. While there have been many successful efforts to avoid unnecessary delays in termination of parental rights (Association for the Children of New Jersey, 1985; ABA Center on Children and the Law, 1990), this remains a grave problem in many parts of the United States.

On the other hand, some jurisdictions have developed procedures for 18 month hearings that fulfill and even exceed the intent of P.L. 96-272. For example, Ohio requires the hearing within 12 months of placement, requires a special motion in advance of the hearing to specify the desired legal status of the child, sets strict limits concerning extension of temporary foster care, and requires the court explain in writing (make specific judicial findings) when foster care is extended (Ohio Revised Code 2151.415; Granik, Cunningham, Colley and Hardin, 1990).

Implementation of the Six Month Review

The six month review of placement was intended both to help avoid unnecessarily lengthy placements and to help improve the quality of out of home placement. The semiannual review is, among other things, to review the appropriateness of placement, review case progress, and project (rather than decide) a likely date for the child's return home or other permanent placement.

Unlike the 18 month hearing, however, courts need not be involved in the six month review. P.L. 96-272 also allows agency review panels or panels of citizen volunteers to conduct semiannual reviews. In fact, most states do not exclusively rely on courts to fulfill this requirement.

Among those places where courts conduct the six month review, there are great differences in the review process. Some courts do not make all of the determinations explicitly required by federal law with regard to six month reviews (such as whether the agency has complied with its own case plan) and in many the review is perfunctory rather than the in-depth progress review it is meant to be. Some state statutes that require six month court reviews do not require P.L. 96-272 findings; if court rules and forms also do not require those findings, the court is unlikely to make them. The federal government does not require courts to make the findings, as is required when agencies conduct six month reviews.

Compounding the inadequacy of some six month court reviews is that they can absorb a great deal of caseworkers' time. In some courts, caseworkers must wait hours at the courthouse for hearings at which the judge, in a few minutes time, simply approves continuation of foster placement.

On the other hand, there are courts that conduct incisive and valuable six month reviews, sometimes in conjunction with a prior review conducted by an agency or citizen panel. An interesting example of pure judicial six month review has been practiced in Maui, Hawaii (Hornby *et. al.*, 1990). There, the agency submits a detailed report to the court and to the parties two weeks in advance of each six month review. This permits parties to review the report for accuracy and to develop alternative recommendations. One week before the review, parties meet in the caseworker's office to try to work out an agreement to present to the judge. If an agreement is reached, the judge is notified and the matter can be set for a brief court review; if not, the parties inform the court concerning the amount of time needed to resolve the disagreement. This avoids the need for excessive court waiting time, adds to efficiency of the court process, and yet allows access to the court when needed to resolve genuine disagreements.

Other jurisdictions attempt to avoid unnecessary consumption of caseworker time by such practices as using beepers for workers located close to the courthouse, by providing workrooms and telephones for workers in the courthouse, and by precisely setting times of hearings in order to limit the workers' wait.

Implementation of Procedural Protections for Parents Concerning Changes in Visitation and Foster Placement

Not surprisingly, practice is similarly varied concerning other mandatory procedural protections, particularly since P.L. 96-272 requirements are not very specific. With regard to procedural protections for parents concerning adverse changes in visitation and changes in children's placements, some states merely notify parents of such changes. Parents informed of such changes may not have access to the courts to challenge them, because some courts lack power, under state law, to overturn such agency decisions; because access to the court is slow;

or because they are indigent and are not provided legal counsel. Agency procedures other than informal discussions with supervisors or managers may not exist.

There are jurisdictions in which such procedural protections are relatively effective. For example, in some jurisdictions legal services programs provide effective legal representation to parents with relative consistency. In San Francisco, private attorneys wishing to be placed on a list for paid court appointments to represent parents must first participate in training and attend hearings with "mentor" attorneys (San Francisco Superior Court Juvenile Division, 1990; Bar Association of San Francisco, 1990; Bay Area Reasonable Efforts Project, 1990). In some jurisdictions, vigorous and impartial agency grievance procedures exist for parents.

Continuing Barriers to Effective Implementation of P.L 96- 272 by the Courts

Thus, while there have been marked improvements in the legal processes that have helped achieve the purposes of P.L. 96-272, the court process often falls far short of what was originally contemplated in the Act. When Congress enacted the various foster care court reforms described above, it assumed these would be carried out with all meticulousness and procedural correctness normally associated with court proceedings. As we have seen, this assumption has often proved incorrect.

It is not difficult to identify reasons for incomplete implementation of P.L. 96-272 court reforms. The main reason is that courts have lacked the capacity to put reforms fully into effect. A fundamental difficulty courts have faced is not enough time to conduct additional steps required by the Act in a careful and complete manner. In addition, while there have been substantial improvements in training and preparation of many juvenile court judges, many still lack sufficient knowledge and long-term professional commitment to foster care related issues.

Caseloads and Time Pressures

Unfortunately, a large number of courts handling child abuse and neglect cases are in a state of profound crisis impairing their ability to conduct timely and rigorous hearings (Glynn, 1988; Yeger, 1990; Zuckerman, 1990). Increased pressures on courts have included increased numbers of cases involving foster care children, the growing severity of cases coming into juvenile courts (particularly those related to drug and alcohol abuse), and the increased number and complexity of hearings as the court's role has matured since 1980.

With regard to the numbers of court proceedings, there are no national statistics kept by courts, but two sets of statistics strongly support that numbers of court proceedings have sharply increased. First, there has been a rapid increase in child abuse and neglect reports, reports which, in many cases, lead to foster placement. Reports have more than doubled in this decade, from 1.15 million in 1980 to 2.4 million in 1989 (American Humane Association, 1980-1987; National Council for the Prevention of Child Abuse, 1990). Second, there has been a recent surge in the number of children in foster care, rising from an estimated 280,000 to 360,000 between June 1987 and June 1990, an increase of 29 percent in just 36 months (American Public Welfare Association, 1990). The vast majority of foster placements involve court proceedings. These national statistics are supported by statistics from a number of individual states. Figure 1 illustrates the rapid increases in court cases in three states.

With regard to increasing case severity, the impact of drug use on the child welfare system is widely known. Inundated with rapidly escalating numbers of cases involving drug related child maltreatment (Kusserow, 1990; Select Committee on Children, Youth, and Families, 1989), and increasingly difficult to treat children, court resources and procedures have been unable to keep pace with demand (Committee on Family Court and Family Law and the Committee on Juvenile Justice, 1990; Wachtler, 1990).

As result of these pressures, and because of growing numbers and complexity of court hearings (discussed later in this article), many juvenile court judges operate under such caseloads and time pressures that the judges simply do not feel able to address issues mandated by the Act (Select Committee on Children, Youth, and Families, 1989; Duquette and Herring, 1990). When a judge has a large backlog of cases in which he or she must decide whether or not to authorize removal of children from their homes, the judge may feel there is time only to review the particular incident precipitating the present crisis, and not to inquire whether the agency has and might still provide services that will allow the child to remain at home. Similarly, when a judge has a docket of 40 foster care review hearings that he or she must finish in two hours, the judge obviously cannot conduct a careful examination of the current status of each case.

As a result, many courts are compelled to severely delay decisions or to make decisions without taking time to hear pertinent evidence. This is in sharp contrast to the court role contemplated by foster care reform legislation. As a direct consequence of court system problems, risks of children needlessly lingering in foster care, unnecessary separation from parents, and placements in dangerous or harmful surroundings are sharply increased.

Federally Imposed Burdens Without Financial Assistance

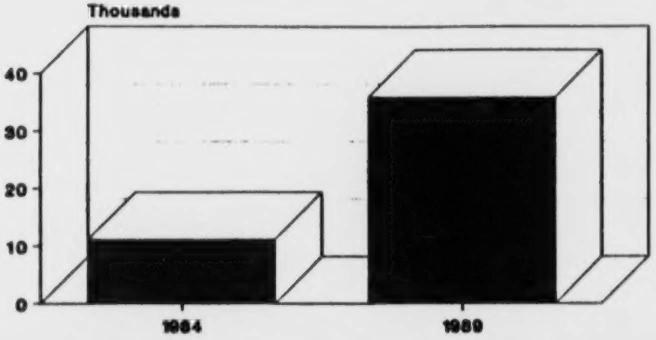
While federal requirements applicable to courts do represent critically needed foster care reforms, they are undermined by a complete lack of federal funding or

Figure 1

DRAMATIC INCREASES IN CHILD ABUSE AND NEGLECT COURT CASES WITHIN NEW YORK, MICHIGAN, AND RHODE ISLAND

NEW YORK

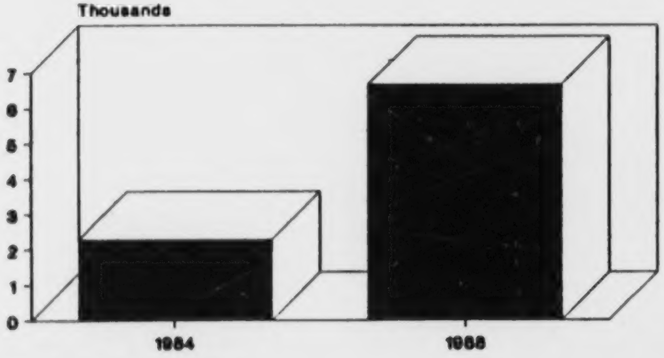
312% INCREASE IN CASES FILED; NEW YORK FAMILY COURT 1984-1989



Source: Office of Court Administration, New York State, Year End Reports.

MICHIGAN

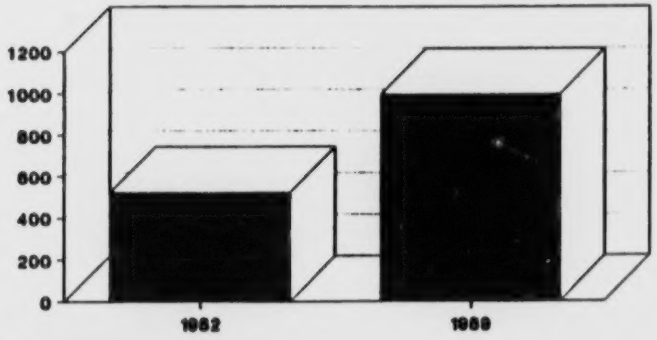
292% INCREASE IN CASES FILED; MICHIGAN PROBATE COURT 1984-1988



Source: National Center for State Courts, child victim cases.

RHODE ISLAND

90% INCREASE IN CASES FILED; RHODE ISLAND FAMILY COURT 1982-1989



Source: Rhode Island Family Court records; child neglect and abuse case filings.

assistance to courts. The Act calls upon the courts to meet already described requirements, in order for funds pursuant to Title IV-B and Title IV-E of the Social Security Act to be paid to the state child welfare agency. Each requirement takes time to fulfill in each case, which has sharply increased burdens on the courts. Thus, in a national study conducted in the mid-eighties by Westat and the American Bar Association, 92 percent of judges surveyed cited their increased workload as a problem in implementing the required 18 month hearing to determine what will be the permanent placement for foster children (Callahan, Cook, and Dodson, 1984).

In addition, as an indirect result of P.L. 96-272, other types of court involvement in child protection litigation have sharply increased. For example, because P.L. 96-272 requirements encourage child welfare agencies to pursue adoption for children unable to return home, court proceedings to legally free children for adoption have dramatically increased.

Furthermore, federal child abuse reporting requirements (Child Abuse Prevention and Treatment Act) have contributed to the sharp rise in reports, bringing many more child maltreatment cases to light and thereby increasing number of cases brought to juvenile courts. Thus, both because of P.L. 96-272 requirements directly applicable to courts and because other federal requirements cause agencies to bring increasing numbers of legal proceedings before the courts, the federal government is a major contributor to the current juvenile court crisis.

Compounding the intense burdens on the courts without federal financial relief has been a lack of federal leadership aiding judicial implementation of P.L. 96-272. The lack of federal guidelines governing judicial implementation of the Act has occurred partly because the federal government lacks attorneys experienced in child protection litigation and partly because federal officials have not been committed to full and effective judicial implementation.

Insufficient Resources Allocated by State Supreme Courts, State Court Administrators, and Legislatures

On the state level, competition for scarce judicial resources among different branches of the courts has inhibited needed resource reallocation to strengthen foster care litigation. At the same time, low priority given to foster care cases and the lack of understanding of such cases inhibits much needed procedural reform. Too few legislators and judicial administrators have been brought up to date in their understanding of the changing nature of these cases. Obsolete methods of measuring judicial caseloads and allocating judicial time reflect this lack of understanding. For example, in one ingenious urban court, the judge assigns a separate docket number and prepares a separate court file for each sibling in a family, in order to expand the number of official cases controlling judicial assignments. This would not be necessary if court administrators in that state put in place an appropriate formula for case allocation. The federal government has taken no steps to assist courts address this problem. While foster care cases have become far more elaborate and demanding, judicial resources have not kept pace.

Based upon information supplied by the National Center for State Courts, in the six states with specialized juvenile and family courts and where statistics are available on the number of child victim cases (Colorado, Georgia, Hawaii, Massachusetts, New York, and Rhode Island), there was a 210 percent increase in child victim court cases between 1984 and 1988, from 24,156 to 50,854, while at the same time there was a four percent increase in the number of judges, from 273 to 284 (Davis and Pullen, 1990). See Figure 2.

Beyond increases in judicial caseloads as measured by numbers of new cases, individual cases have become far more burdensome. Fifteen years ago, before recent changes in the nature of child welfare litigation, juvenile court cases involving child abuse and neglect were much simpler. At that time, the court's role was generally limited to presiding over a single hearing concerning alleged maltreatment of the child, in which attorneys seldom appeared.

Child welfare litigation has undergone revolutionary change since then. Now there usually are a whole series of hearings as the child moves through the system, including, among others, an emergency placement hearing, a fact finding hearing (to see whether allegations are true), a disposition hearing (to decide where the child will be placed and under what conditions), a series of judicial oversight hearings while the child is in foster care, and, far more often in recent years, lengthy hearings to legally free the child for adoption.

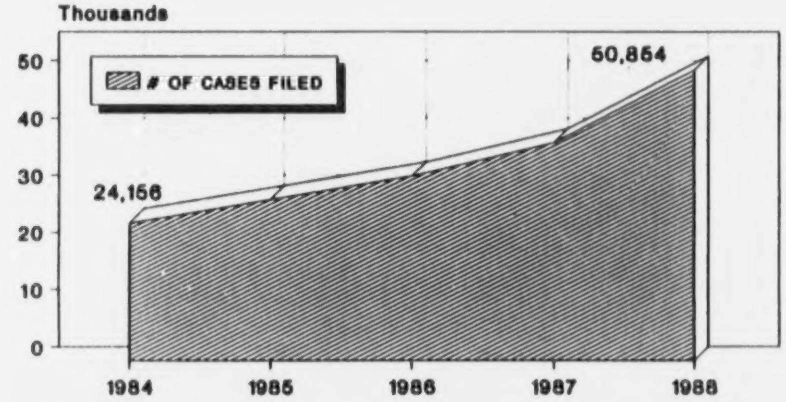
These changes are reflected in the increasing complexity of juvenile court legislation throughout the United States. Because the state statutes adding to the number and complexity of juvenile court hearings typically incorporate language from federal foster care requirements, it is clear that they are intended to help the courts implement federal requirements (Robison, 1990).

Thus, compounding increases in the numbers of hearings the judge must deal with is the fact that at the same time, law and procedure have become more sophisticated and individual cases more demanding. As agencies have struggled to provide permanency for foster children and have used the courts more aggressively to accomplish this, not only have state statutes dealing with foster care cases become more elaborate, but hearing procedures have become more formal, more written decisions have been handed down by appeals courts, and many more legal publications have been written. These are all healthy developments in the law and ultimately necessary to achieve permanent homes for children in foster care, but the new demands on court systems have outstripped the courts' capacity to track, assimilate, and implement changes.

Figure 2

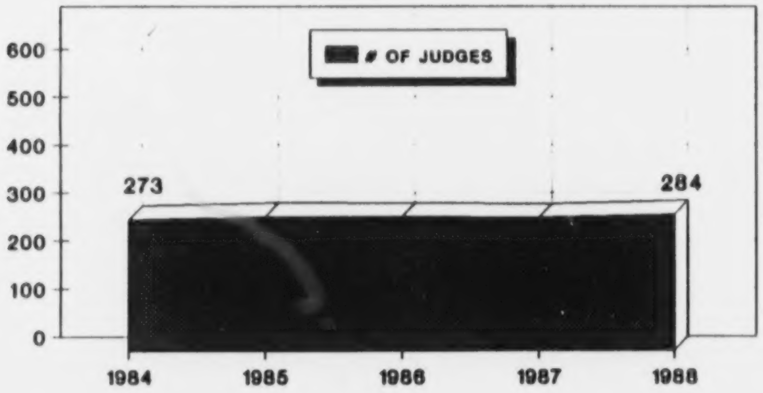
Growing Caseload Pressures on Juvenile and Family Court Judges: Six State Comparison 1984-1988

Child Victim Cases Filed



111% INCREASE

Family and Juvenile Court Judges



4% INCREASE

Colorado, Georgia, Hawaii, Rhode Island, Massachusetts, and New York (the only states where both statistics are available).
Source: National Center for State Courts

State Pressures for Superficial Compliance by the Courts

Another reason for uneven compliance at the state level is that many child welfare agencies press the courts for superficial compliance with P.L. 96-272. It is understandable that agencies often do not desire energetic and effective oversight from the courts; most public entities, like private enterprises, prefer to avoid oversight. The problem, however, is that it is in the agencies' self interest to press for superficial compliance and it is in the courts' self interest, due to lack of resources, to acquiesce. The Act provides federal money to public child welfare agencies that is contingent on at least superficial "paper" compliance by the courts. No funding is available to help the courts to defray their additional costs.

This is why, as explained earlier, some courts will make a record sufficient to meet federal audit requirements but without conducting a meaningful judicial inquiry as contemplated by the Act. Unfortunately, federal audit requirements and regulations currently do not go beyond merely requiring that particular words be recited in the court order.

Insufficient Knowledge and Preparation of Individual Judges

Another problem, in addition to inadequate judicial time and resources, is that some judges lack sufficient knowledge and interest in the requirements of the Adoption Assistance and Child Welfare Act and in planning for foster children in general. This is partly because in many areas judges rapidly rotate in and out of juvenile court, while in others juvenile court proceedings represent a small part of a judge's caseload.

Also important, however, is that many states have no rules and procedures to require selection of judges specially qualified for juvenile court proceedings and to require special training for juvenile court judges handling cases involving maltreated children. Such selection and training is necessary because child protection litigation has become increasingly complex (as discussed earlier), because child protection cases in juvenile court operate under a special code and with special procedures, because child protection proceedings involve highly sensitive social work and mental health issues, and because the judge needs to be knowledgeable concerning services available to families and children and concerning the workings of the child welfare agency.

Again, there is a lack of federal incentives for the training of judges. While the Act provides a 75 percent match for the training of agency staff administering the Title IV-E foster care program, (which has helped bring about gains in staff competence), it provides no funding for training judges.

Insufficient Knowledge and Preparation of Legal Counsel

Another barrier to full implementation of P.L. 96-272 by the courts is the failure of legal counsel to call requirements of the Act to the courts' attention and to provide information that will help courts meaningfully review planning for foster children. It is difficult for a judge to effectively review the case of a child in foster care if the attorneys are unfamiliar with case facts and unknowledgeable about applicable law.

In some jurisdictions, child welfare agencies have limited access to counsel in child welfare cases (Washington Post, 1990; Florida Supreme Court, 1988). In such jurisdictions, it is not unusual for the attorney to first meet with the caseworker shortly before the hearing. In such situations, the attorney cannot know important information that should be elicited through questions to the caseworker. In other areas of law such behavior by attorneys would be considered unethical and would not be tolerated.

In some other jurisdictions, caseworkers are actually forced to appear without counsel in many court proceedings. Caseworkers are not trained to conduct court proceedings and such practice has been found, in at least one state, to constitute unauthorized practice of law (Florida Supreme Court, 1989).

There are a number of reasons why some agencies are inadequately represented. Some agencies do not understand what they need in terms of legal representation and how their clients are adversely effected by this deficit. Therefore, they do not demand improvements.

In many jurisdictions, agencies are represented by attorneys who are not answerable to the agency. For example, the agency may be represented by locally elected prosecutors or attorneys within a separate division of the state or county government. While there are numerous such attorneys who do a fine job for child welfare agencies, there are others for whom child welfare work is a low priority (Segal, 1988).

Another problem is the lack of agency funding targeted for legal services. While it is clear federal matching funds are currently available for counsel who assist agencies administer the federal Title IV-E foster care program and who are employees of the agencies, the federal government has failed to clarify availability of federal funding for others representing agencies or to specify what services counsel must perform to receive federal funds. Federal policy guidelines suggest that child welfare agencies may not be reimbursed for contracted legal services (Administration for Children, Youth, and Families, 1987), although there is no support for this position in the law or regulations.

As suggested earlier, in the discussion of procedural protections, an equally fundamental difficulty in effective judicial implementation of P.L. 96-272 by the courts is lack of effective legal representation for parents and children. Fair and effective legal proceedings require effective participation by all parties and a reasonable balance in the quality and energy of advocacy on behalf of the different parties. Even if the agency is only represented by caseworkers, parents are relatively far less experienced and familiar with the system and therefore are at a substantial disadvantage.

As already explained, many jurisdictions do not appoint counsel for indigent parents at all stages of the proceedings, and many do not take steps to ensure effective representation in this highly specialized area. Many attorneys underestimate the subtlety and complexity of decision making in this area of the law and many do not understand the style of advocacy that is effective in such cases. Others, lacking reasonable compensation, find it difficult to devote sufficient time to provide effective representation to the parties. As with agency attorneys, it is not unusual in some jurisdictions for parents' and children's attorneys to meet with their clients only shortly before court hearings.

Insufficient Information and Services from Child Welfare Agencies

Many child welfare agencies have made judicial involvement in child maltreatment cases more difficult by failing to provide adequate information to their own counsel or directly to the courts. In individual cases, many agencies do not consistently and systematically provide information concerning their efforts to work with the family and the family's progress. This information is not provided in advance and in writing as it should be, and there is usually only a perfunctory oral presentation unless the judge insists otherwise. The federal government has taken no affirmative steps to remedy this problem.

It is also difficult for many judges to oversee planning for children and families because judges do not know what help and services are available in the community. This is true, in part, because agencies do not routinely provide courts with written descriptions of available services. Without information as to what help exists, it is more difficult for the judge to determine, for example, whether the agency has made reasonable efforts to prevent placement.

It is also difficult for judges to make sound decisions because no predictable and consistent pattern of services exists in many states. For example, the decision to terminate parental rights and legally free a child for adoption usually depends largely on whether the agency has done all it can to assist the parents yet has been unsuccessful. Such decisions are made far more difficult when the status and availability of services are in a state of chaos.

That is, in many states and localities, money for a specific service often runs out in the middle of the year; long waiting lists exist for most basic types of services, even for emergency cases; and types of services vary widely from community to community within each state. In such circumstances, it is difficult for the judge to decide in a termination of parental rights case, where additional or more timely services may or may not make a difference.

The federal government has taken no affirmative steps to assure that agencies report to the courts concerning service availability, nor-- more importantly-- to assure the service plan required by Title IV-B of the Social Security Act sets forth a set of services that actually will be provided on a consistent basis in all parts of the state.

Future Directions

Continuing the Involvement of the Courts in Implementation of P.L. 96-272

While there is continuing controversy concerning the expanding role of courts in child welfare cases, there is little realistic possibility of a return to the situation of 15 years ago where there typically was but one hearing, usually uncontested. Emphasis on achieving permanency demands multiple court proceedings and greatly increases the likelihood of adversarial proceedings. The precise extent of future court involvement in these cases, however, is uncertain and debatable. While there are clear necessary minimums regarding the courts' involvement, there also are important areas where states may legitimately assign different roles to the courts. What precise role the courts ultimately take on in child welfare cases will probably depend, in large part, on the extent to which courts are able to improve their performance in such cases.

Several P.L. 96-272 court reforms are essential in child welfare cases and therefore require continued emphasis, apart from the fact they are federal mandates. First, while deciding whether to allow a child to be placed into foster care, the court should take into account not only danger to the child at home but what might be done to alleviate the danger without removing the child. Therefore, the judicial determination whether the agency made "reasonable efforts" to prevent placement needs to be real and rigorous.

Second, after a child's placement has been court approved, there should be a decision concerning the ultimate placement status of the child within a reasonable time, and the decision to place a child in foster care for an extended time should not occur by default. Therefore, there should be a rigorous hearing concerning the ultimate placement status of the child within 18 months-- and probably much earlier.

Third, if there is a real dispute about visitation, placement, or services, parties should have quick access to an impartial decision maker to resolve the issue. Government power over foster care cases is too great not to provide a practical means of redress. While the courts should be empowered to resolve disputes concerning visitation and placements, disputes concerning services might be addressed either by the courts or through an administrative hearing process. P.L. 96-272 guarantees the right to an administrative "fair hearing" with regard to services and other benefits provided pursuant to the Act.

Whether the court should conduct frequent reviews and specifically whether the six month review should be assigned to the courts is less clear. This question revolves around the quality, depth, and objectiveness of such reviews in comparison to other approaches, as well upon the cost and efficiency of frequent judicial foster care case reviews. Empirical evidence is lacking on these issues, and, as pointed out earlier, the resources and capacity of courts to effectively address child welfare cases varies widely (Hardin, 1985).

Whether or not courts are to be involved in conducting frequent periodic reviews, they need to use restraint. First, they need to take care concerning their consumption of agency caseworkers' time. In addition to taking specific steps as outlined above to limit needless waiting time for workers, courts need to consider carefully whether additional documentation and hearing requirements are actually worth additional time required of workers, given that they interfere with workers' ability to work with clients and service providers.

In addition, courts need to take care they limit themselves to appropriate functions of courts and not infringe on the role of the social work supervisor. That is, the court should base its decisions on evidence and should not act on the judge's personal impressions of the parties. While it is appropriate for a judge to determine credibility of witnesses based on observation in the courtroom, it is not appropriate, for example, for the judge to develop or amend the case plan based upon in-court personal impressions of family members' personalities. This is true not only because the judge is not qualified to make diagnoses of family members and to design service plans, but also because the artificiality of behavior in the courtroom setting makes it a poor site for formulation of such opinions and diagnoses.

Accordingly, courts should issue orders concerning services and service plans only in the following circumstances: (1) what the agency has proposed is not logically calculated to address problems actually necessitating state intervention; or (2) there is competent and persuasive evidence demonstrating effectiveness of a particular placement, service, or approach the agency has declined to provide. In the event the service plan needs to be changed and unless the change is limited and specific, the court usually should instruct the agency itself to make revisions and submit a revised plan to the court. Thus, a judge should not order a child to be placed in a particular facility based on the judge's personal impression of the facility. Not only is this not the proper role of the court, but it may well constitute legal error as being unsupported by evidence on record.

State court systems need to recognize and deal with the new realities of child welfare litigation and to thoroughly reexamine their own implementation of foster care reforms. This includes not only an examination of statutes, court rules, and court procedures but also of court administration, staffing, and caseloads. State court systems need to study how foster care reforms actually are being implemented in different courts, to identify specific reasons for superficial implementation, and to develop and implement concrete plans for improvement. This often will include requesting and allocating greater resources and judicial personnel for such cases.

Specifically, practitioners need a clearer picture of what proceedings mandated by P.L. 96-272 actually should look like. For example, there need to be concrete, step-by-step descriptions of how the reasonable efforts determination might be conducted. Likewise, there need to be better descriptions of basic elements of the range of proceedings in child welfare hearings. This information can be gathered in part through observations of court proceedings in jurisdictions where court proceedings are relatively rigorous and timely.

With this information, it would be easier to identify deficiencies in particular jurisdictions and, in particular, to determine what caseloads and resources are needed by courts to improve litigation. Once it is possible to describe key elements of court proceedings in child welfare cases, it should then be possible to develop judicial caseload standards in such cases for the first time.

Currently, there are stunning variations among jurisdictions in the numbers of child welfare cases individual judges are expected to handle. For example, the 1989 caseload of Chicago judges was over five times that of Cincinnati judges, if defined as the number of new abuse, neglect, and dependency cases heard by each judge, and if each child involved is deemed to be one case. In 1989, over 7,600 children were subjects of new abuse, neglect, and dependency proceedings filed in Chicago. The cases were assigned to six full time judges, for a ratio of over 1,267 children per judge (Grundel, 1990). In 1989, 849 children were the subjects of new abuse, neglect, and dependency proceedings filed in Cincinnati. Judges and referees worked on these cases on a part time basis and collectively put in time equivalent to that of 3.4 full time judges, for a ratio of approximately 250 children per full time judge (Seibel, 1990).

After gaining a concrete understanding of specific types of help needed within a particular state, the state must be prepared actually to allocate needed resources. In addition to more judges and court staff, where necessary, the state must upgrade quality of legal representation for the parties. In addition to providing funding for attorneys, the judicial system must clarify and enforce the ethical obligations of such attorneys to fully and effectively represent their clients.

As suggested earlier, it is also important to mandate systematic improvements in information provided to the courts, both in specific cases and concerning what services are available in particular areas. Likewise, it is important for agencies to develop more coherent, consistent, and predictable sets of services. This would help judges evaluate what is possible to help families and as alternatives to foster placement and, more importantly, would directly benefit families themselves.

Needed Federal Legislation

While the principal responsibility for effecting judicial child welfare reforms rests with the states, help is also needed from the federal government. Federal help is needed not only because the burdens on the courts have been exacerbated by federal requirements, but also because, as discussed earlier, there is strong inertia to needed change at the state level. Just as federal assistance was needed to overcome inertia to reforms by child welfare agencies, it is also needed to overcome inertia to systemic improvements by the courts.

Federal assistance need not consist of major or long term federal investment to improve the courts. What is needed is aid that will assist state court systems taking a careful, methodical look at how they implement federal foster care requirements and to begin to effect system-wide improvements. This process requires several years, but federal involvement need not be indefinite. A limited amount of federal involvement is required, through legislation designed to assure that new federal assistance is used only to identify and initiate needed reforms, reforms that would eventually become part of the continuing operations of each state court system.

Relatively small investments for improvements in court process can have a disproportionate effect on children. For example, adding a few judicial positions can speed and improve decision making for hundreds or even thousands of children and facilitate the work of scores of social workers. Tightening state judicial rules concerning delays and continuances in court hearings can spare thousands of children and families from months of suspense and uncertainty (Hardin and Shalleck, 1985). Strengthening the written court record can help judges understand what has taken place earlier, thus preventing judicial mistakes and keeping cases on track by preventing parties from successfully rearguing the same issues and repeatedly offering the same excuses.

Federal assistance should be channelled through the highest level of the state court system, because systematic and consistent improvements in handling foster care cases must come about through action by top level court administrators and judges. Only the chief judicial officer of the highest state court and the chief administrator of the court system have the power to make statewide, systemic changes within the court system.

Federal law also should assure that, before beginning their federally assisted efforts to improve judicial implementation of P.L. 96-272, the chief judicial officer and court administrator first gain an understanding of the needs of foster care litigation. After completion of their federally assisted studies, state court systems should then be expected to develop plans to improve their implementation of P.L. 96-272. That is, once they have completed their collection of data, have prepared a description of how courts are actually implementing P.L. 96-272 reforms, and have analyzed what needs to be done to improve court performance, they should develop and implement an overall plan for improvement. Such a plan should include specific goals, tasks, and timetables.

Establishing such a plan not only will add structure and organization to the courts' efforts, but also will make the courts more accountable in their use of federal funds. That is, establishing goals, tasks, and timetables not only help to make the court system's efforts more methodical, but also will make it clear what the court system intends to accomplish during years it receives federal assistance and will make it easier to evaluate whether it has done so.

In addition to providing for new federal efforts to assist the courts, federal law should be amended to encourage agencies to provide better information to courts. This should include mandatory steps to strengthen agency legal representation, to provide better written information (as outlined earlier), and to create a clear array of services for families and children.

Each change described in this section is supported by official policy of the American Bar Association as reflected in an August 1988 Resolution (ABA, 1988), and a recent resolution of the National Council of Juvenile and Family Court Judges (NCJFCJ, 1990). The Conference of Chief Justices (CCJ, 1990), the organization of top judicial officials of all states, also supports aid to the highest state courts for systematic improvements in the courts' implementation of P.L. 96-272. Two bills currently pending in the Congress, H.R. 5020 and H.R. 5125, call for the changes here described.

These changes are important steps in ensuring future economic and social health of the United States. As with education, a sound child welfare system is an important building block in preparing for the twenty-first century. By improving quality of intervention on behalf of abused and neglected children, such children are more likely to become productive citizens rather than criminals, chronic mental inpatients, or other dependents of society. Courts are essential to success of the child welfare system because there must be timely and careful decisions concerning placement and legal status of children for casework and services to be effective.

Mark Hardin is director of the Foster Care Project at the ABA Center on Children and the Law. Parts of this paper are based on a report prepared by the author to accompany a 1988 American Bar Association Resolution calling for amendments in federal law to improve judicial implementation of foster care reforms.

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IMPLEMENTATION OF P.L. 96-272: ADOPTION ASSISTANCE

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Adoption assistance programs provide cash benefits and services to families who adopt children with special needs. In the past, many of these children were thought to be unadoptable.[1] However, in recent years, changed attitudes, revised child welfare policies, and provision of adoption assistance have made adoption possible for many children who would otherwise remain in state care.[2]

While adoption assistance programs are only a part of the effort to place children in permanent homes, they are a significant component in an overall program to achieve permanency for children. Adoption assistance programs encourage families to adopt children with special needs by providing necessary support to assist the family in caring for the adopted child.[3] These programs also help ensure that the adoptive placement is permanent. Many families report that adoption assistance makes it possible for them to meet the special needs of the child and to weather crises that might otherwise destroy a family.[4]

The Role of Adoption Assistance in P.L. 96-272

Congress created the federal adoption assistance program as part of its effort to reduce foster care drift. Although much of P.L. 96-272 is designed to preserve or reunify birth families, Congress recognized that some children will never return home. These children, all too often, spend their lives in state care rather than in permanent and stable homes.[5] For most of these children, the preferred permanent placement is with an adoptive family. However, because many of the children have special needs, the actual or potential cost of care discourages families from adopting them. Adoption assistance programs remove this disincentive and provide families with financial support to meet the child's needs.

Prior to 1980, many states provided adoption assistance to families who adopted children with special needs. However, these programs were funded with state and local revenues, and no federal dollars were available. Since states did receive federal financial participation for foster care benefits, there was a disincentive to move children out of federally assisted foster care and into state and locally funded adoption assistance programs. In 1980, Congress removed this disincentive by creating a federal adoption assistance program that reimbursed the states for part of their costs in providing adoption assistance to children who would otherwise remain in federally assisted foster care. This program, along with the permanency planning requirements contained elsewhere in P.L. 96-272, was designed to move children out of foster care as soon as possible once the state determined the child could not return to his or her family of origin.[6]

Overview of the Federal Adoption Assistance Program

Benefits created by P.L. 96-272 in 1980 include monthly cash payments, up to the amount the child would have received in foster care; Medicaid eligibility; and social services. In 1986, Congress added reimbursement of nonrecurring adoption expenses to compensate for the loss of an income tax deduction that was repealed at the same time.[7] Because the program was designed to cover children who are already receiving federal benefits, children must be eligible for Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI) to qualify for adoption assistance benefits other than reimbursement of nonrecurring costs. The state must additionally determine that the child cannot or should not be returned to the birth home and the child has a special need, as defined by the state, which makes it reasonable to conclude the child would not be adopted without adoption assistance. Finally, the state must determine that reasonable effort to place the child without adoption assistance has been unsuccessful, unless such an effort would not be in the child's best interest.

Once a child qualifies for the program, the amount of adoption assistance is negotiated between adoptive parents and the appropriate state agency based on the child's needs and the adopting family's circumstances. All of the assistance and services to be provided for the child must specified in an adoption assistance agreement. The agreement can be modified with the consent of the parties if circumstances change in the future.

Adjustments to the Federal Adoption Assistance Program

As the program was implemented, federal and state officials and adoption advocates identified several technical problems with the federal program.[8] In 1986, Congress passed several amendments addressing these problems.

Interstate Medical Assistance

The first problem involved interstate medical assistance. Children who receive federal adoption assistance are automatically eligible for Medicaid coverage. However, prior to 1986, the state responsible for the adoption assistance was responsible for providing Medicaid reimbursement and for issuing the child's Medicaid card. For children placed across state lines and for families that moved from one state to another, this created a number of problems.[9] The greatest problem was obtaining medical services for a child with an out of state Medicaid card. In 1986, Congress resolved the problem by making children eligible for Medicaid in the state where they reside, regardless of which state is responsible for adoption assistance.[10] This change also makes children eligible for Title XX Social Services in their state of residence.[11]

Cash Payment Requirement

The second problem was the requirement that an adoption assistance payment be made in order to qualify a child for Medicaid. Prior to 1986, the law provided Medicaid eligibility to children "with respect to whom adoption assistance payments are made." This language required children to receive a cash adoption assistance payment in order to become eligible for Medicaid, even if the child and the family did not need cash assistance. As a result, states paid children who needed only medical assistance a token payment in order to qualify them for Medicaid. This created unnecessary costs, not only in the payment of unnecessary benefits, but also as a result of the administrative work required to process the token payments. In 1986, Congress changed the law to permit states to enter into adoption assistance agreements for medical assistance only without making a cash adoption assistance payment.[12]

Court Order Requirement

The third problem was the requirement that a final or interlocutory adoption order be entered before a child became eligible for adoption assistance. This put children and adoptive families at the mercy of court calendars and agency procedures. Variations in state court procedures also created confusion over what constituted an interlocutory adoption order.[13] Because of this requirement, children placed with families before court orders were issued had to go without adoption assistance benefits unless the adoptive parents were certified or licensed as foster parents. In 1986, Congress amended the law to permit adoption assistance payments when an adoption assistance agreement is signed, regardless of whether the court has acted on the adoption.[14]

These amendments, together with the additional benefit of reimbursement for nonrecurring adoption expenses discussed above, and assurance that alien children granted amnesty will qualify for benefits,[15] demonstrate that Congress has been receptive to the needs of the children and families who are the beneficiaries of the federal adoption assistance program and has been willing to amend federal law to meet those needs.

Assessing the Impact of Federal Adoption Assistance

Experts agree that adoption assistance is an important component of a program to ensure that children have permanent and stable homes.[16] Families also report that adoption assistance is essential in maintaining a stable placement for the child.[17] However, it is difficult to isolate and analyze the specific impact of the federal adoption assistance program for several reasons.

Lack of Adequate Data

First, there is a lack of reliable data about adoptions in general and special needs adoptions in particular on a national basis. No one organization or agency has been responsible for data collection. From the 1950s to the mid 1970s, the Children's Bureau of the U.S. Department of Health and Human Services (known then as the Department of Health, Education and Welfare), collected adoption data voluntarily submitted by the states, but this effort ended in 1975.[18] In 1982, the American Public Welfare Association (APWA) resumed collection of voluntarily submitted data through the Voluntary Cooperative Information System (VCIS), but the last available yearly VCIS statistics are from 1985.[19] The National Committee for Adoption (NCA) has conducted state surveys in recent years,[20] but the lack of a consistent data collecting effort has left gaps in available information.

In addition, use of the data that exists is problematic. Reporting of data in all of these collection efforts has been voluntary. Therefore, yearly statistics and trends are often based on reports from a small number of states. VCIS adoption totals and adoption subsidy caseloads have been estimated from reports by a few states.[21] Moreover, the type of data collected has not been consistent from year to year. For example, NCA reported on foster parent adoptions in 1985 but not in 1989. Furthermore, because states are not required to maintain records in a uniform manner, the numbers may not count the same categories of children. In 1985, states used 21 different definitions for foster care and 14 different definitions for adoption.[22] Also, states have not always separated children waiting for adoption from those in non-final adoptive placements.[23] It is therefore difficult to draw reliable conclusions from any of the data that exist.[24]

A recent report to Congress by the Secretary of the U.S. Department of Health and Human Services (HHS) outlines the need to collect adoption and foster care data and proposes a system for mandatory, uniform reporting of data.[25] However, at this point there is no reliable nationwide information on children in the child welfare system, let alone on adoption of children with special needs.[26]

Relationship to Other Parts of the Child Welfare System

A second problem in identifying effects of federal adoption assistance is that the program was developed as part of a larger effort to obtain permanent homes for children and to reduce the time they spend in state care. At the same time, changes in attitudes and practices occurred concerning which children are adoptable and who is an appropriate adoptive parent.[27] Thus federal adoption assistance was not an isolated force but rather part of a total change in the way adoption was viewed in the child welfare system. Concurrent reforms included establishment of permanency planning requirements, designed to identify children who could be adopted; promotion of adoption for children with special needs through photolistings, adoption exchanges, and media activities; increased efforts to recruit adoptive families, including recruitment of foster parents; retraining child welfare staff; and modifications in child welfare procedures.[28] Other significant federal efforts included implementation of the Adoption Opportunities Act (P.L. 95-266) and an initiative by HHS to promote adoption of waiting children.[29]

Specific provisions of the adoption assistance program complemented these changes in child welfare practice. For example, at a time when child welfare agencies were relaxing requirements for adoptive parents, provision of adoption assistance for the first time permitted low income families to consider adoption. Also, the new willingness to consider foster parents as adoptive parents was encouraged by the adoption assistance program, recognizing that the search for a non-subsidized placement might not be in the child's best interest when ties to a foster parent are strong.[30] Thus, the adoption assistance program alternately reflected and influenced reform activities.

Success of adoption assistance depends on the effectiveness of other parts of the child welfare system. For example, permanency planning procedures are designed to make children available for adoption as quickly as possible. When the permanency planning system fails, children may remain in care without ever reaching the point where adoption assistance can benefit them.[31] Even when adoption is identified as a goal, implementation may be held up by delays in court procedures or in administrative action necessary for placement,[32] problems not due to the adoption assistance program itself.

Furthermore, availability of other resources can affect the adequacy and effectiveness of the adoption assistance program. For example, Congress specifically made children receiving adoption assistance eligible for Title XX Social Services on the same basis as children receiving AFDC benefits. When P.L. 96-272 was enacted, Congress anticipated that Title XX services would continue to expand and that appropriations for child welfare services under title IV-B of the Social Security Act would increase annually.[33] However, Title XX appropriations have decreased in actual dollars since 1981.[34] The cuts are even more dramatic in terms of constant dollars.[35] Title IV-B funds and other federal support, such as funding for alcohol, drug abuse, and mental health programs have suffered a similar fate since 1980.[36] As a result, resources available to assist families are significantly less than those anticipated when Congress passed P.L. 96-272.

Slow Implementation

A final problem in evaluating the impact of the federal adoption assistance program is the slow speed of implementation. HHS did not promulgate final regulations to implement the program until May, 1983.[37] The lack of federal guidance has delayed effective implementation of all aspects of P.L. 96-272.[38] This delay is exacerbated in the case of a totally new federal program, such as adoption assistance.[39] In 1981, only six states participated in the federal adoption assistance program,[40] and by 1984, some states still had not claimed any federal funds even though their state plans had been approved.[41]

Implementation of reimbursement for nonrecurring adoption costs has been similarly delayed. Although Congress created the reimbursement program in 1986, final regulations were not in place until December 1988.[42] Recently, the APWA reported that at least 13 states still have not implemented the program.[43] These delays make it difficult to assess the full impact of the law as written because children and families are not receiving the full benefits Congress intended.

Statistical Trends

In spite of the difficulty in defining specific impact of federal adoption assistance, some conclusions can be drawn from available statistics and anecdotal information First, it is clear states are increasing use of IV-E adoption assistance funds. From 1981 to 1989, IV-E adoption assistance expenditures increased from $500,000 to a projected $133.9 million,[44] and the number of children served rose from an average of 11,000 children per month to an estimated 43,000 children per month.[45] Early experience indicates that increased use of federal adoption assistance funds is due to an increase in subsidized adoptions overall and not merely to a supplanting of state programs.[46] Although some states showed a decrease in state subsidies as federal subsidies rose, the total number of subsidized adoptions and the total expenditure for adoption subsidies rose significantly from 1981 to 1983.[47] This trend continued through 1985.[48]

Furthermore, it appears that children with special needs who are available for adoption are being adopted in greater numbers.[49] Although adoption of children leaving state care decreased from 1983 to 1985, the percentage of adoptions involving children with special needs increased.[50] In addition, the percentage of children in state care who had special needs decreased during that period,[51] as did the number of children in institutions.[52] Based on available statistics for 1983 - 1985, one federal study concluded that the impact of adoption subsidies is apparent in the high proportion of children with special needs who are adopted, especially when this figure is compared with those waiting to be adopted.[53] This conclusion is supported by reports of adoptive parents who view adoption assistance as essential to successful adoption of children with special needs.[54] Federal officials also report that the overall impact of P.L. 96-272 and related state efforts have reduced the time children spend in care.[55]

In addition, adoption assistance is viewed as cost effective by state officials and others working in the field. Formal studies and surveys of state programs support this view.[56] However, there has been no comprehensive study of the cost effectiveness of the federal adoption assistance program nationwide.

Proposals for Change

Child welfare professionals, state officials, and advocates for parents and children have consistently raised a number of recommendations for improvement of the federal adoption assistance program. Implicit in all of the recommendations is an assumption that the adoption assistance program works and that it should be made available as needed to move children into permanent adoptive homes. Each of the proposals is an extension or improvement of the current program rather than a call for restructuring or replacement.

Post Adoption Services

Parents and professionals agree that comprehensive post adoption services are necessary to meet the needs of the child and the adoptive family.[57] The need for these services continues to exceed their availability.[58] Therefore, a large number of individuals and organizations have recommended increased support for post adoption services.[59]

Eligibility Criteria

The requirement that children show a link to the AFDC or SSI program has denied federal benefits to a large number of children in state care.[60] However, the need for adoption assistance is not limited to children who can meet the specific criteria of these programs. Furthermore, if these children are not placed in adoptive homes they will continue to require care that will be paid for in full by the state or federal government. Therefore, many commentators have recommended opening up federal adoption assistance eligibility to all children with special needs who will benefit from the program.[61] In addition, children should not lose their eligibility for federal adoption assistance when an adoption disrupts or dissolves or as a result of the death of the adoptive parents.[62]

A related issue is the use of means tests to determine eligibility. Although federal law prohibits use of a means test to determine eligibility of an adoptive family,[63] some states have procedures that impose an effective means test on adoptive parents.[64] Periodic reviews as eligibility redeterminations also impose an actual or perceived means test on adoptive parents.[65] These practices deter adoptive parents from accepting a child with special needs. They also redirect the focus of adoption assistance from the needs of the child to the financial situation of the adoptive parents. Therefore, advocates have recommended that steps be taken to enforce federal restrictions on means tests.[66]

Another related issue is the treatment of adoption assistance as income for other benefits programs. Some states treat adoption assistance benefits as available to the entire family when calculating household eligibility for programs such as AFDC and food stamps. The effect of this practice is a decrease in available support to meet the special needs of the child. Federal law should be clarified so that adoption assistance benefits are not counted as income to other members of the family.

Permanency Planning

Permanency planning is essential in moving children towards adoption when they cannot return to their family of origin. Some advocates have suggested that permanency planning requirements of the federal law be strengthened by requiring states to make reasonable efforts to place children for adoption in a timely fashion in appropriate cases and by requiring that case plans and reviews include a specific focus on adoption efforts once parental rights are terminated.[67]

Data Gathering

As discussed above, national child welfare data collection is inadequate. In order to assess the success of federal adoption assistance and other child welfare reforms, improvement in the collection of child welfare information is essential.[68]

Conclusion

The federal adoption assistance program has been an important part of the effort to obtain permanent homes for children and to avoid foster care drift.

Additional improvements can make the program more effective, and improved data collection will assist in documenting the success of the program in fulfilling its purpose.

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Footnotes

1. See E. Cole. (1983). "Advocating for Adoption Services" in Hardin (Ed.) Foster Children in the Courts. Boston: Butterworth Legal Publishers. 453.

2. *Ibid.* 453-454, 472-474.

3. Cole, *supra.*

4. Nelson, (1985). On the Frontier of Adoption: A Study of Special-Needs Adoptive Families. New York: Child Welfare League of America. 49.

5. See Allen, Golubock & Olson (1983). "A Guide to the Adoption Assistance and Child Welfare Act of 1980" in Hardin (Ed.) Foster Children in the Courts. Boston: Butterworth Legal Publishers. 575-578 and sources cited therein.

6. See *e.g.* 125 Congressional Record 11,704 (1979), statement of Senator Cranston; Allen *et. al., supra.*

7. 42 U.S.C. §673 (a) (1) (B).

8. See *e.g.* Office of Inspector General, Department of Health and Human Services, Adoption Assistance: A National Program Inspection. (1984).

9. Bussiere, A. (1985). "Issues in Interstate Adoptions." In Segal (Ed.) Adoption of Children with Special Needs: Issues in Law and Policy. Washington DC: American Bar Association.

10. 42 U.S. C. § 673 (b); 42 U.S.C. §1396a (b).

11. A number of states have also taken the initiative in resolving interstate problems through the Interstate Compact on Adoption and Medical Assistance. See Bussiere and Segal. (1989, 1990). "Adoption Assistance for Children with Special Needs." In Hollinger (Ed.) Adoption Law and Practice. New York: Matthew Bender. Supp. 9.06

12. 42 U.S.C. §673 (b) (1) (B).

13. Human Development Services, U.S. Department of Health and Human Services, ACYF-PIQ-82-16, Adoption Assistance; Interlocutory Decree; Medicaid; Out of State. June 21, 1982.

14. 42 U.S.C. §673 (b) (1) (B).

15. 42 U.S.C. §673 (a) (2).

16. Cole, *supra;* Segal, E. (1985). "Adoption Assistance and the Law." In Segal (Ed.) Adoption of Children with Special Needs: Issues in Law and Policy. Washington DC: American Bar Association. 127.

17. Nelson, *supra;* Partridge Hornby, & McDonald (1986). Learning From Adoption Disruption: Insights for Practice. Portland: University of Southern Maine. 34-40.

18. Office of Human Development Services (OHDS). U.S. Department of Health and Human Services, Adoption and Foster Care Data Collection, 7 (May 26, 1989); Cole, *supra.* 454-455.

19. *Ibid.*

20. National Committee for Adoption. (1985, 1989). Adoption Factbook. Washington DC.

21. Maximus, Inc. (1987). State Child Welfare Abstracts: 1980-1985. Washington DC: U.S. Department of Health and Human Services, Administration for Children, Youth and Families.

22. Maximus, Inc. (1988). Child Welfare Statistical Fact Book 1985: Adoption. P-3.

23. *Ibid.* N-17.

24. *Ibid.* See Appendix, VCIS Data Comparability.

25. OHDS, *supra.*

26. Report 101-395, No Place to Call Home: Discarded Children in America. A Report of the Select Committee on Children, Youth and Families, U.S. House of Representatives, 101st Cong. 2nd Sess., 161-162 (1990). 84-87.

27. Cole, *supra.* 453.

28. See *e.g.* Adoption Assistance: A National Program Inspection, *supra.* 9-10.

29. *Ibid.*, 12.

30. *Ibid.*, 11-12; Segal, *supra.* 131.

31. See *e.g.* Testimony of Marcia Robinson Lowry, Serial 100-61, Foster Care, Child Welfare, and Adoption Reforms, Joint hearings Before the Subcommittee on Public Assistance and Unemployment Compensation of the Committee on Ways and Means and the Select Committee on Children, Youth and Families, 100th Cong. 2nd Sess., 26-27 (April 13 and May 12, 1988).

32. Report 101-395, *supra.* 54-55.

33. Statement of Ruth Massinga, President-Elect, American Public Welfare Association, and Secretary, Maryland Department of Human Resources, Serial 100-61, *supra.* 407.

34. Report 101-395, *supra.* 161-162.

35. Report 100-260, Abused Children in America: Victims of Official Neglect, A Report of the Select Committee on Children, Youth and Families, U.S. House of Representatives, 100th Cong., 1st Sess., 45-48 (1988).

36. Report 101-395, *supra.* Table 12 at 122, 163-165 and 190-191; Report 100-260, *supra.*

37. 48 Federal Register 23104. (May 23, 1983).

38. See U.S. General Accounting Office, Comptroller General, Better Administration Can Contribute to Improving State Foster Care Programs. (1984).

39. Adoption Assistance: A National Program Inspection, *supra.* 1.

40. Report 101-395, *supra.* 171.

41. Adoption Assistance: A National Program Inspection, *supra.* 1.

42. 53 Federal Register 50215. (December 14, 1988).

43. American Public Welfare Association, Issue Brief: States' Experience in the Reimbursement of Nonrecurring Adoption Costs. (1990).

44. States have two years to submit claims for federal reimbursement.

45. Report 101-395, *supra.* 171-172.

46. Adoption Assistance: A National Program Inspection, *supra.* 6-7.

47. *Ibid.*, 6 and 10.

48. Child Welfare Statistical Fact Book 1985: Adoption, *supra.* IV-1; State Child Welfare Abstracts, *supra.* N-9.

49. Statement of Sydney Olson, Assistant Secretary for Human Development Services, U.S. Department of Health and Human Services, Serial 100-61, *supra.* 315.

50. Maximus, Inc. (1987). *supra.* N-18; Maximus, Inc. (1988). Child Welfare Chart Book: 1985-Substitute Care/Adoption. Washington DC: Foster Care Information System. 19.

51. State Child Welfare Abstracts, *supra.* N-4.

52. Statement of Sydney Olson, *supra.* 315.

53. Child Welfare Chart Book, *supra*. 24.

54. Nelson, *supra*.

55. *Ibid.*, 15; Statement of Sydney Olson, *supra*. 314.

56. Adoption Assistance: A National Program Inspection, *supra*. 22-24.

57. Nelson, *supra*; Partridge, *et. al.*, *supra*; Watson and Strom. (1987). Report of the Child Welfare League of America National Adoption Task Force, 10 and 13.

58. Adoption Assistance: A National Program Inspection, *supra*. 25.

59. America's Waiting Children: A Report to the President from the Interagency Task Force on Adoption. (1988). 32; Statement of Michael W. Weber, Director, Hennepin County Community Services Department, Serial 100-61, *supra*, 192-198; Statement of Joe Kroll, Executive Director, North American Council on Adoptable Children, St. Paul, MN, *ibid.*, 293, 297; Statement of MaryLee Allen, Director, Child Welfare and Mental Health, Children's Defense Fund, *ibid.*, 363-364; Statement of David S. Liedeman, Executive Director, Child Welfare League of America, *ibid.*, 382; Watson and Strom, *supra*.

60. Statement of Ruth Massinga, *supra*. 401.

61. *Ibid.*, 411; Testimony of Monna L. Hurst, Regional Director, Northern Virginia Department of Social Services, *ibid.*, 186; Statement of Joe Kroll, *supra*. 295.

62. Segal, *supra*. 150-153.

63. Human Development Services, U.S. Department of Health and Human Services, ACYF-PIQ-82-02, Adoption Assistance Program "Means Test." (January 19, 1982).

64. Statement of Joe Kroll, *supra*. 299-300.

65. Segal, *supra*. 148-151.

66. Statement of Joe Kroll, *supra*; Statement of the National Center for Youth Law and Youth Law Center, *ibid.*, 506.

67. See *e.g.* Grimm (1985). "Foster Care Review Following Termination of Parental Rights." In Segal (Ed.) Adoption of Children with Special Needs: Issues in Law and Policy. Washington DC: American Bar Association.

68. America's Waiting Children, *supra*. 15-16; OHDS, *supra*.

P.L. 96-272:
AN ACT IN SEARCH OF REGULATION

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North American Council on Adoptable Children

Public Law 96-272, the Adoption Assistance and Child Welfare Act of 1980, has benefitted many children in foster care and encouraged special needs adoption throughout the country. But the Act and its history are also riddled with unresolved problems.

Intent of this landmark legislation was to provide an appropriate and nationally uniform response to issues raised by children at risk of needing out-of-home care. Until its passage, systems varied radically from state to state and even county to county within the same state. P.L. 96-272 was designed to encourage good and consistent practice in state and local responses to the needs of these children. The Act provides federal assistance for needed services to enable children to remain with birth families. If a child must still be removed, the law should assure either return to a safe birth home in a reasonable length of time, or placement with an adoptive family in order to have a permanent, loving, culturally sensitive home as quickly as possible.

In fact, despite its excellent intent, implementation of the Act has been worse than spotty. It has provided incentives for improved services for many children, but lack of specificity and adequate monitoring continues to cause or exacerbate serious problems. The Administration has failed to provide the guidance and oversight needed to assure maximum effectiveness for dollars spent. Children at risk remain subject to the vagaries and preferences of the particular bureaucracy in which they find themselves.

Implementation of Public Law 96-272

P.L. 96-272 was signed into law June 17, 1980. The Act consists of several sections, including Title IV-B, which provides for child welfare services, and Title IV-E, which provides federal payments for foster care and adoption assistance.

In the summer of 1981, the Reagan Administration opposed implementation of the Act as part of a larger attempt to cut social programs. Efforts to cap Title IV-E foster care administration and maintenance were defeated in Congress, and the Act had to be implemented despite Administration opposition. But, this opposition drastically affected the law, since the Administration avoided regulatory processes needed to properly carry out the Act's intent.

As Representative George Miller (D-CA), Chairman of the House Select Committee on Children, Youth and Families (and one of the strongest supporters of the Act) observed at a 1988 hearing:

> In 1981, less than one year after the reforms were enacted, this Administration sought the outright repeal of the law. The Congress refused. Yet, during investigations by the Select Committee on Children, Youth, and Families, we have heard very disturbing testimony that the Department of Health and Human Services (HHS) has essentially tried to 'repeal' the law through its lax enforcement of the law. And the result of this indifferent administration has been continuing harm to children and their families.[1]

Federal administration of the Act has continued to be a combination of basic opposition, failure to offer specific implementation guidance to states, concern about the cost of administering programs at the state level, arbitrary monitoring, and total inability to accurately determine the effectiveness of programs because of lack of adequate data collection. Problems have been consistent and persistent, and focus on four major categories: regulations, federal 427 audits, appropriateness of administrative costs, and uniform data collection.

Promulgation of Rules

On December 31, 1980, during its closing days, the Carter Administration proposed comprehensive regulations for implementation of all major components of the law. Child advocates strongly supported these rules. States, on the other hand, provided written comments opposing proposed regulations as too detailed and intrusive. This reticence was not surprising because states had never before been subject to this level of federal regulations in the area of child welfare.

When HHS finally released regulations May 23, 1983, they were little more than a restatement of the Act. A comparison of the two sets of rules regarding adoption assistance agreements provides an example. Both the Reagan Administration's final regulations and the proposed Carter Administration version cited the law, stating the agreement shall "be signed and in effect... prior to the final decree of adoption," and stated the agreement must include the amount of assistance, duration of the agreement, and other Title XIX services to be provided.[2] In addition, the Carter Administration regulations required the agreement outline the process of periodic recertification, how states are to be updated concerning changes in children's needs or circumstances, how adoptive parents shall be notified of changes in the agreement, and whether or not the agreement remains in effect if the adoptive family moves to another state. These issues were simply not spoken to in the Reagan Administration's final regulations.

In fact, it was *seven* years later (HHS Policy Announcement, PA 87-03, July 23, 1987) before the Reagan Administration actually provided states, workers and adoptive parents with detailed requirements and a sample contract for adoption assistance agreements. Federal reviewers found such poor quality and inconsistency in adoption assistance contracts in many states that they finally felt it imperative to issue these guidelines.

Another example of different approaches to regulations relates to promotion of adoption assistance. The Reagan Administration's final rule simply restates the law: "The state must actively seek ways to promote the adoption assistance program."[3] The proposed Carter Administration regulations went into some detail, requiring:

> distribution of written notices to local offices and private agencies with whom the states contract for adoption services; foster parents and foster parent organizations; community-based agencies and networks including civic, social and religious organizations affiliated with the population of children who are in need of placement... The notice shall specify the eligibility criteria for children and describe the benefits available and the procedures through which interested persons may apply to become adoptive parents under the state's adoption assistance program.[4]

Again, while some states initially perceived this language as intrusive, adoption advocates felt this detail was instructive and very much needed. For example, the final regulations do not speak to the issue of what constitutes "reasonable efforts" or appropriate timeframes when attempting to reunite a child with his or her birth family. This silence again results in vastly different interpretations by states and counties. Given the same circumstances, the life of a child entering out-of-home care in Mississippi will have a very different outcome than a similar child in Michigan.

Lack of specificity in the law has also resulted in a great deal of confusion and frustration when states are subject to compliance reviews.

427 Audits

Despite absence of detailed regulations, the Act mandated an audit of state expenditures under Section 427 of Title IV-B. All states automatically received their share of $141 million allocated in Title IV-B. Additional funds were available to states if they met certain eligibility requirements. Supplementary funds required an inventory of all children in foster care under state responsibility for six months preceding the inventory; a comprehensive statewide information system; a preplacement preventive service program; a service program to help children return to their families or be placed for adoption; a case plan and periodic case review system; and procedural safeguards including dispositional hearings and insuring parental rights pertaining to removal, change of placement, and visitation.

Beginning in 1981, states were permitted to self-certify that procedural protections were in place and were then subject to 427 audits by federal representatives.

Standards for these audits were minimal at first, and increased in subsequent years. During an initial review, a state had only to show evidence of established case plan and case review procedures and family reunification services. Audits required that a case review survey must confirm that in at least 66 percent of the sample, the Section 427 protections were provided--including a minimum of 13 of 18 specific protections related to case planning, periodic review, and other procedural safeguards. To pass a subsequent review, it was required that Section 427 protections be provided in 80 percent of cases. Compliance with the triennial review required that protections be provided in at least 90 percent of reviewed cases and that a minimum of 15 of 18 specific protections be in evidence.

There have been numerous problems with these audits. The most basic is the difficulty "auditing" a system that has been so unclear and inconsistent in its implementation. From the beginning, HHS provided little guidance to states on *how* to be in compliance. The 1983 final regulations essentially restated the law and only provided detail on possible types of preventive and reunification services. No specifics were provided in the area of case plan and review. As a result of this early confusion, nine of the 27 states reviewed in 1983 failed, even though standards were far from rigid.

Subsequently, states felt they were being judged on a set of constantly shifting standards. In 1985, Juan Vigil, representing the New Mexico Department of Human Services and the National Council of State Human Service Administrators, testified before a House Subcommittee:

> States have been subjected to an array of inconsistent, inequitable and changing federal standards and interpretations of the law... It was not until the federal compliance reviews in FY 1982 that it

> became obvious that state compliance with section 427 was being measured against an unknown set or sets of standards. There still were no promulgated federal standards or regulations, nor were there any finalized federal review guides in place. Yet, federal compliance reviews were being conducted across the country. Some states were found out of compliance when other states with exactly the same policies and practices were found in compliance. States within the same region were being held to different standards. Different regions handled the reviews differently. In fact, federal reviewers, reviewing cases in the same state, often had major differences of opinion about what constituted compliance. Needless to say, states, caught in the middle of this federal confusion, were at a loss as to how best to proceed in implementing the P.L. 96-272 reforms. [5]

Years later, in April 1988, Congressional hearings found the situation basically unchanged. Monna L. Hurst, director of the Northern Virginia Regional Office of the Virginia Department of Social Services, testified:

> After eight years with the passage of this legislation, HHS still has no published review criteria to assist states for coming into compliance, a simple guide of minimum acceptable standards. [6]

At the same hearings Ruth Massinga, then president-elect of the American Public Welfare Association and secretary of the Maryland Department of Human Resources, reached a similar conclusion:

> Part of the problem with existing compliance reviews stems from the failure of the federal government to provide states with standard criteria on which state programs will be measured. With little federal guidance states have been left to develop unique systems which may or may not meet the criteria provided at later dates. [7]

Members of Congress have also consistently challenged the Administration regarding its action or inaction on these issues. At this same series of hearings in 1988, Representative George Miller (D-CA) said to Joseph Mottola, deputy commissioner for HHS's Administration for Children, Youth and Families (ACYF):

> In 1980, you had regulations issued that told the states exactly what to do. You pulled those regulations back. What you did then was to ask the states to self-certify. You then created a checklist. Even in your testimony, you tell me you have a new checklist with new boxes, so it will go faster. The evidence we have is that children are being abused beyond our wildest expectations, that millions of

> dollars are being misspent... Yet, you have no sense of urgency about changing the system by which you audit this one. 8

It is ironic that many states initially resisted detailed guidelines on implementation of P.L. 96-272 and now are desperate for them. States are clearly saying that if receiving federal funds means their performance is to be evaluated, they must have information about the standards against which they will be judged.

The Administration seems to recognize this dilemma, but fails to rectify it. As early as 1983, Dorcas Hardy, assistant secretary for Human Development Services (HDS) at HHS, indicated they would be developing a Notice of Proposed Rulemaking (NPRM) to pull together pertinent regulatory requirements. 9

This clarification has yet to take place, though promises are still forthcoming. In April 1990, Wade Horn, ACYF commissioner, said the department was beginning the process of developing regulations for section 427 and hoped to publish a NPRM by the end of the year. He indicated they would be looking at definitions and review procedures, and were considering requiring more of the agency and caseworker in development and content of the case plan. Raising expectations of the case review process and requiring more documentation from the dispositional hearing were also under consideration. The department is considering rephrasing other protections to make them meaningful to the agency and requiring active family involvement to make compliance "part of good practice, rather than paper check-off." 10

At this point, advocates for the child welfare system remain skeptical about these assurances.

It is also interesting to note that even when a 427 audit finds a state to be in noncompliance, HHS policies do *not* assure that future funding will be withheld. Under current HHS policy, a state's performance is not reviewed while an appeal is in process, so that states often receive funding for years following failure of a compliance review. Connecticut (with a failed audit in 1985), Florida (failed in 1984), Illinois (failed in 1984), and Maryland (failed in 1983) have all continued to receive funds for up to four years after failing a compliance review, without further assessment of their eligibility for those funds.

On November 21, 1989, Congress responded to states' complaints by passing legislation that waives any fines incurred as a result of non-compliance with the foster care protections of section 427 for any period prior to federal fiscal year 1991.

Child advocates also find themselves faced with a dilemma regarding state compliance with federal audits. Certainly there is a need for clearer regulations with consistent enforcement and consequences for non-compliance.

Unfortunately, if a state is out of compliance and does not receive federal dollars, it is the state's vulnerable children, and not program administrators, who bear the brunt of the consequences.

HHS estimates that the FY 1990 federal share of IV-B and IV-E program funding will be $1.9 billion. A standardized procedure for how best to improve the lives of children and families with these dollars is long overdue.

Administrative Costs

Under the law, allowable administrative costs under Title IV-E of the Act were defined as referral to services, preparation for and participation in judicial determinations, placement of the child, development of the case plan, case reviews, case management and supervision, recruitment and licensing of foster homes and institutions, rate setting, and a proportionate share of agency overhead.

Yet in all Congressional hearings since 1985, representatives of HHS have continually identified administrative costs as one of the most serious problems they face in administering P.L. 96-272. Administration officials seem to consistently contend increases in state claims are inappropriate, that somehow states are taking advantage of the Act and are not meeting its original intention. Examples of this criticism abound. As Dodie Livingston, commissioner of ACYF stated in 1987:

> As indicated earlier, one issue of concern to us is the tremendous growth of administrative costs in these programs. We have sent to Congress a legislative proposal to limit federal matching of costs to states administering foster care and adoption assistance programs to 50 percent of maintenance costs... It appears that states are finding ways to refinance existing services through these entitlements and that the growth of administrative costs does not reflect increases in services, or improved management. Because they are open ended, administrative costs are expected to continue to grow uncontrollably unless we do something now. [11]

Again in April 1990, Wade Horn echoed the same sentiments, and added "... the President is proposing that Congress put a limit on the increase in administrative costs of ten percent per state per year." [12]

Administrative costs are indeed rising. Payments to states for Title IV-E foster care administrative reimbursements have increased from $30.2 million in FY 1981 to $331 million in FY 1988. (See Table 1 for a state by state breakdown of reimbursements for federal FY 1981 through FY 1988. Figures for FY 1989 are not yet available.)

Table 1. Title IV-E Foster Care Administrative Costs by State 1981-1988

(Dollars in Millions)

	FY'81	FY'82	FY '83	FY'84	FY'85	FY'86	FY'87	FY'88
Alabama	0.06	0.07	0.08	0.13	0.27	0.27	0.17	0.16
Alaska	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.01
Arizona	0.03	0.04	0.55	0.93	1.30	1.57	1.77	2.29
Arkansas	0.03	0.03	0.04	0.03	0.09	0.24	0.48	0.44
California	10.68	6.78	34.86	41.87	50.48	52.61	65.70	74.48
Colorado	0.04	0.03	0.04	0.02	0.00	0.03	4.27	1.29
Connecticut	0.00	0.01	0.82	0.92	0.86	1.23	1.42	1.75
Deleware	0.01	0.02	0.02	0.02	0.08	0.00	0.00	0.54
District of Columb	0.18	1.64	0.82	1.72	2.77	2.55	2.40	2.20
Florida	0.11	0.13	0.14	0.17	0.62	1.02	1.23	3.73
Georgia	0.52	2.97	3.49	3.50	3.60	4.32	4.62	5.41
Hawaii	0.00	0.00	0.00	0.01	0.01	0.02	0.01	0.02
Idaho	0.02	0.02	0.02	0.02	0.03	0.02	0.04	0.04
Illinois	0.91	1.03	3.21	0.94	3.92	4.47	11.38	8.83
Indiana	0.13	0.02	0.07	0.17	0.26	0.24	0.28	0.28
Iowa	0.04	0.52	0.68	0.80	0.70	1.05	1.62	2.21
Kansas	0.15	0.40	0.53	0.68	0.73	0.80	0.87	0.95
Kentucky	0.05	0.04	0.08	0.07	0.02	0.92	1.14	1.41
Louisiana	0.43	0.76	0.98	5.40	5.05	5.21	5.87	7.99
Maine	0.01	0.06	1.05	1.07	0.91	1.15	1.64	1.98
Maryland	0.29	0.18	0.17	0.16	3.90	7.70	9.57	11.56
Massachusetts	0.07	0.08	2.47	2.26	2.13	2.45	1.69	4.14
Michigan	4.70	6.55	7.65	9.36	11.19	21.32	18.50	20.69
Minnesota	0.31	0.50	1.29	1.70	4.63	4.85	5.20	8.04
Mississippi	0.04	0.07	0.08	0.08	0.08	0.07	0.04	0.02
Missouri	0.12	0.13	2.49	4.36	7.54	7.62	7.95	7.76
Montana	0.00	0.40	0.29	0.35	0.35	0.43	0.30	0.29
Nebraska	0.14	0.41	0.34	0.87	1.18	1.12	0.99	2.22
Nevada	0.05	0.02	0.02	0.02	0.03	0.03	0.03	0.38
New Hampshire	0.05	0.24	0.31	0.47	0.48	0.49	0.66	1.07
New Jersy	0.07	0.09	0.07	1.23	2.50	8.14	7.39	7.39
New Mexico	0.00	0.01	0.09	0.03	1.22	1.23	1.22	1.68
New York	3.50	39.72	37.34	37.71	36.45	54.73	71.74	72.09
North Carolina	0.08	0.10	0.17	0.15	0.16	0.17	0.20	0.21
North Dakota	0.03	0.04	0.07	0.06	0.09	0.21	0.27	0.25
Ohio	0.93	0.43	0.32	0.39	7.55	11.82	9.23	16.95
Oklahoma	0.07	0.10	1.94	1.42	1.25	1.54	1.73	1.93
Oregon	1.42	1.57	2.07	2.54	2.30	2.91	3.61	7.33
Pennsylvania	2.00	2.23	3.03	3.80	10.71	6.60	7.06	7.50
Rhode Island	0.00	0.00	0.00	0.00	0.17	0.82	1.21	3.10
South Carolina	0.05	0.05	0.10	0.27	0.66	0.72	1.44	2.27
South Dakota	0.07	0.04	0.02	0.02	0.01	0.02	0.03	0.97
Tennessee	0.06	0.08	0.06	0.07	0.03	0.04	0.05	0.05
Texas	0.20	0.28	0.42	6.44	2.50	4.33	8.98	21.62
Utah	0.04	0.06	0.22	0.34	0.42	0.52	0.54	0.39
Vermont	0.06	0.40	0.72	0.92	1.09	1.09	1.74	1.90
Virginia	0.37	0.37	0.47	0.53	0.45	0.46	0.50	1.00
Washington	0.35	1.54	1.77	2.09	1.87	2.40	2.66	3.69
West Virginia	0.02	0.01	1.15	2.63	2.88	3.44	2.81	1.86
Wisconsin	1.73	1.73	2.63	3.26	6.87	7.40	7.58	6.30
Wyoming	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.38
Total	30.22	72.00	115.25	142.00	182.39	232.39	279.83	331.04
% Increase		138%	60%	23%	28%	27%	20%	18%

Figures in bold represent states with large growth rates during year they learned to draw down claims

Source: Department of Health and Human Services, Office of HDS, ACYF

Though these increases are very large, a closer analysis reveals some telling patterns. After the Act was first implemented, individual states had to learn how to apply for reimbursement for expenses that could legitimately qualify as administrative costs. A pattern developed in which an individual states' reimbursement would increase dramatically for a year or two as they developed sophistication in the accounting and administrative procedures that documented reimbursable expenses. Percentage increases then usually level off in subsequent years and suggest a more reasonable growth rate.

Table 2 provides some specifics, including total foster care administrative costs (column 1) and percentage increases (column 2) between 1981 and 1988. Column 3 represents total foster care and administrative costs with a few states excluded. (These states had extremely large growth rates during that year--when they first effectively learned to "draw down" legitimate claims.) The growth rates shown in column 4 (without the larger states during their "leap" year) reflect percentage increases that are much more in line with the recent recommendation from the Administration that growth be capped at ten percent.

Although there is no doubt that efforts at cost containment are important, an across-the-board cap would not be fair to states that do not currently request their fair share of administrative reimbursements. An examination of Table 1 shows that many states are being reimbursed for relatively small amounts--Arkansas, Mississippi, North Carolina, and Tennessee, for example.

During the same time period in which the administration continually criticized state spending for administrative costs, many child welfare professionals defended the Title IV-E reimbursement system and emphasized the true scope of administrative tasks under this definition. In 1988, Ruth Massinga testified on behalf of the American Public Welfare Association and the Maryland Department of Human Resources.

> The Administration has continued to call for capping the administrative costs of the Title IV-E foster care program. 'Administrative costs' in this program are unique in that they include direct service caseworker time: finding appropriate substitute placements for children, case planning and reviews, referral of children and families for services, preparing for and testifying in court, recruiting and licensing foster homes and institutions, and setting rates for institutions, and setting rates for institutions. These are the very activities that safeguard children's and families' rights and facilitate family reunification and permanency for children. It is unfair and counterproductive to deny states the use of these funds for the express purposes that Congress meant to encourage and subsidize. [13]

Table 2. Analysis of Growth in Title IV-E Administrative Costs 1981-88

(Dollars in Millions)

	All States		Less Select States (see below)	
	Column 1 Title IV-E FC Admin Costs	Column 2 % Annual Increase	Column 3 Title IV-E FC Admin Costs	Column 4 % Annual Increase
1981	30.26			
1982	72.04	138%	26.06 to 27.71	6%
1983	115.20	60%	63.80 to 66.66	4%
1984	142.00	23%	113.80 to 130.16	14%
1985	182.41	28%	132.66 to 147.53	11%
1986	232.32	27%	168.53 to 201.12	19%
1987	280.16	20%	222.77 to 254.09	14%
1988	330.94	18%	258.46 to 281.97	9%

States excluded from amounts in Column 3 yearly figures because of large growth rate during the year theylearn to draw down adminisrative claims.

1981-82	DC, GA, NY
1982-83	AZ, CA, CT, IL, ME, MA, MO, OK, WV
1983-84	LA, TX
1984-85	MD, MN, NM, OH, PA, WI
1985-86	KY, MI, NJ, RI
1986-87	CO, IL, SC, TX
1987-88	FL, NE, NV, OH, RI, SD, TX

Source: Interpretation of Table 1

In all its criticism of administrative reimbursement, HHS has continually proposed capping the appropriation. Yet it has not specifically reviewed what is legitimately covered as an administrative expense. Nor has it exercised its option to adjust the Act and assure that funding balances administrative costs with services, or improved services to children. The Administration has yet to promulgate regulations that would limit categories of reimbursement. Even more astounding is failure to recommend appropriations for Title IV-B funding that would automatically cap Title IV-E.

We all have an interest in appropriate cost containment. Strong federal regulations with clearly delineated expectations about what services are to be provided with federal funds seem the best means of ensuring that the needs of vulnerable children are met in a cost-effective manner.

Foster Care and Adoption Information System

Perhaps most amazing of all is that ten years after passage of P.L. 96-272 there is still no national child welfare, foster care, and adoption information system requiring states to report data in a consistent, comparable format. We have no way of documenting actual numbers of children in foster care and adoption in this country. There is no means of accurately compiling the most basic data about how many children are in care or what kinds of programs are effective. Obviously, this makes sound policy development and planning impossible.

As Congressman George Miller (D-CA) testified in April 1990:

> Because HHS doesn't have basic data to tell us how that money [in excess of $1 billion] is spent and whether children in care receive more appropriate and effective services, we don't have a clue about what we're getting for our money, or more to the point, what the children are getting. 14

Child advocates have been working for a uniform data collection system for many years. In 1985, Margaret Williams, Association of Junior Leagues, Inc., testified:

> In...1983 HHS rejected the request for specific reporting requirements. Consequently, it is impossible to obtain uniform data regarding children in foster care. The only uniform reporting currently required of states by HHS is the average monthly number of children for which expenditures are claimed. While this reports the number of children in IV-E foster care at a particular time...it tells nothing about the characteristics of these children, not even the length of time they are in care. Since the monthly figures merely represent the total number of children served in a particular

month there is no way of knowing to what extent they represent the same children or different children. 15

Congress finally recognized the magnitude of the problem and included in the Omnibus Budget Reconciliation Act of 1986 (Public Law 99-509, Section 9443) an amendment mandating creation of a uniform foster care and adoption data system to provide "comprehensive information for federal policy purposes. Valid, reliable and timely information will be routinely available to assess on a continuing basis the incidence, characteristics, and status of children in adoption and foster care."

The initial report of the system's advisory committee was completed October 1, 1987. Child advocates and child welfare professionals welcomed it enthusiastically. However, HHS failed to meet *statutory* deadlines, submitting its report to Congress nearly a year late--May 1989. By December 31, 1988, HHS was to have promulgated final regulations.

Still, Administration officials keep offering assurances that the system is on its way. In June 1989, Mary Sheila Gall, HDS assistant secretary, said implementation of a new data collection system on foster care and adoption was one of her highest priorities. 16 In fact, HHS recommendations for a new data collection system were formally submitted to Congress that month.

A year later, ACYF Commissioner Wade Horn admitted the department's figures on the total number of children in foster care were estimates. "We expect to be getting actual data from the states as the information begins to arrive from implementation of the adoption and foster care data collection requirements mandated in Title IV-E," he said. "The regulations for this data collection have been sent to the Office of Management and Budget (OMB) for clearance". 17

As of August 1, 1990, an Administration official reported that proposed regulations would be published later in the month. Unofficial reports have claimed the delay was caused by a debate between HHS and OMB over who will pay the estimated $40 million cost of instituting the data collection program. While this debate continues, administrative costs of Title IV-E programs continue to increase at more than $100 million per year. And public policy makers still do not know how many children are in out-of-home care.

Summary and Recommendations

With passage of P.L. 96-272, the federal government for the first time set out to provide states with incentives to develop uniform programs for children at risk and in out-of-home care. The Act was to provide a fiscal incentive to states that encourages permanency for children in a reasonable length of time. The federal government has, in fact, since spent billions of dollars toward this end. Yet lack of specific guidelines and criteria for the use of funds has meant these dollars have often not had their intended impact.

Implementing a uniform national data collection system is of utmost importance. We are simply operating in the dark without it. To evaluate the effectiveness of our services to children and improve public policy affecting them, we must at least be able to count the children involved. Child advocates must urge the Administration to move ahead *quickly* with issuing regulations on the proposed data collection system. Congress must also be willing to appropriate funds for any start-up costs involved in establishing the system. The price tag will be minimal compared to what the government is already spending annually for these vulnerable children. An accurate data collection system is an essential first step to any long term improvements in the child welfare system.

Vulnerable children desperately need strong federal leadership. States need to be told precisely what is expected of them--outlining good practice standards, what constitutes reasonable efforts toward reunification, recruitment, and much more. These standards and expectations need to be measurable and clear, so that states know when and how their services to children will be evaluated and what the consequences of non-compliance will be. A consensus on what constitutes legitimate administrative costs also needs to be determined, so that states and the Administration can plan accordingly and concentrate energies on providing quality services to children.

Like an overly permissive parent, the federal government has been quite generous in its financial support of this nation's increasing population of vulnerable children. What is sorely needed now is firm and consistent enforcement of rules, limits and guidelines to accompany that support.

Joe Kroll has been executive director of NACAC since 1985, and is a noted speaker and trainer on adoption issues. He's an adoptive and birth father, and his involvement with NACAC goes back to 1975 as conference coordinator through the University of Minnesota. He's been a NACAC board member and developed the organization's initial advocacy program in 1979.

Roberta Frank edits Adoptalk, *a quarterly newsletter, and administers other projects for the organization.*

Footnotes

1. Testimony of U.S. Representative George Miller (D-CA), Serial 100-61, Foster Care, Child Welfare and Adoption Reforms, Joint hearings before the Subcommittee on Public Assistance and Unemployment Compensation of the Committee on Ways and Means and the Select Committee on Children, Youth and Families, U.S. House of Representatives, 100th Congress, Second Session, 305 (May 12, 1988).

2. 48 Federal Register, 23116. (May 23, 1983).

3. *Ibid.* 23117.

4. 45 Federal Register, 86840. (December 31, 1980).

5. Testimony of Juan Vigil, Director, New Mexico Human Services Department and Chair, Social Services Committee of the National Council of State Human Service Administrators, Serial 99-54, Amendments to the Foster Care and Adoption Assistance Program, Hearing before the Subcommittee on Public Assistance and Unemployment Compensation of the Committee on Ways and Means, U.S. House of Representatives, 99th Congress, First Session, 215-217 (September 19, 1985).

6. Testimony of Monna L. Hurst, Director, Northern Virginia Regional Office, Virginia Department of Social Services, Serial 100-61, Foster Care, Child Welfare, and Adoption Reforms, Joint hearings before the Subcommittee on Public Assistance and Unemployment Compensation of the Committee on Ways and Means and the Select Committee on Children, Youth, and Families, U.S. House of Representatives, 100th Congress, Second Session, 184 (April 28, 1988).

7. Testimony of Ruth Massinga, President-elect of the American Public Welfare Association and Secretary of the Maryland Department of Human Resources, Serial 100-61, Foster Care, Child Welfare, and Adoption Reforms, Joint hearings before the Subcommittee on Public Assistance and Unemployment Compensation of the Committee on Ways and Means and the Select Committee on Children, Youth, and Families, U.S. House of Representatives, 100th Congress, Second Session, 410 (April 28, 1988).

8. Testimony of Representative George Miller (D-CA), Serial 100-61, Foster Care, Child Welfare, and Adoption Reforms, Joint hearings before the Subcommittee on Public Assistance and Unemployment Compensation of the Committee on Ways and Means and the Select Committee on Children, Youth, and Families, U.S. House of Representatives, 100th Congress, Second Session, 331 (April 28, 1988).

9. Correspondence from Dorcas Hardy, Assistant Secretary for HDS, HHS, to the New Mexico Department of Human Services, read into the record during testimony of Juan Vigil, Director, New Mexico Human Services Department and Chair, Social Services Committee of the National Council of State Human Service Administrators, Serial 99-54, Amendments to the Foster Care and Adoption Assistance Program, Hearing before the Subcommittee on Public Assistance and Unemployment Compensation of the Committee on Ways and Means, U.S. House of Representatives, 99th Congress, First Session, 218 (September 19, 1985).

10. Testimony of Wade Horn, Commissioner, ACYF, HHS, at a hearing of the Subcommittee on Human Resources of the Committee on Ways and Means of the U.S. House of Representatives, 6 (April 4, 1990).

11. Testimony of Dodie Livingston, Commissioner of ACYF, HHS, Continuing Crisis in Foster Care: Issues and Problems, Hearing before the Select Committee on Children, Youth, and Families, U.S. House of Representatives, 100th Congress, First Session, 14 (April 22, 1987).

12. Testimony of Wade Horn, *supra.* 4.

13. Testimony of Ruth Massinga, *supra.* 407.

14. Testimony of U.S. Representative George Miller (D-CA) before the Subcommittee on Human Resources of the Committee on Ways and Means, U.S. House of Representatives, 4 (April 4, 1990).

15. Testimony of Margaret Williams, representing the Association of Junior Leagues, Inc., Serial 99-54, Amendments to the Foster Care and Adoption Assistance Program, Hearing before the Subcommittee on Public Assistance and Unemployment Compensation of the Committee on Ways and Means, U.S. House of Representatives, 99th Congress, First Session, 240 (September 19, 1985).

16. Testimony of Mary Sheila Gall, Assistant Secretary for HDS, HHS, Serial 101-53, Proposals to Improve the Foster Care and Child Welfare Programs, Hearing before the Subcommittee on Human Resources of the Committee on Ways and Means, U.S. House of Representatives, 100th Congress, First Session, 120 (June 1, 1989).

17. Testimony of Wade Horn, *supra.* 2.

POSTSCRIPT

by U. S. Representative George Miller
Chair, House Select Committee on Children, Youth and Families

A decade ago, the abuse and mistreatment of children in the foster care system led Congress to enact Public Law 96-272 to provide these children with greater protection and security, and to compel greater accountability from the foster care system for the billions of tax dollars that underwrite the program.

Our landmark legislation was developed with the assistance of many state and local social service administrators, child advocacy organizations, federal program specialists, and child welfare professionals.

With the passage of the Adoption Assistance and Child Welfare Act, we sought to create a better system of care for children who needed intensive interventions in order to avert out-of-home placements, as well as for those who could no longer remain with their families. The law's primary emphasis lay in mandates for expanded preventive and reunification services to reduce the need for, or the duration of, foster placements, and to facilitate adoption where restoration of the child to his or her birth family is not feasible. We also extended federal maintenance payments and health care coverage to remove statutory impediments to adoption and to encourage the adoption of children with special needs.

As a result of this legislation, the numbers of children in foster care declined by more than one-third between 1977 and 1983. Today, family preservation programs that provide intensive family-based services mandated by P.L. 96-272 successfully prevent costly out-of-home placements for hundreds of children.

But, despite the sound principles and early success of the law, the child welfare system has been unable to respond to many children and families in its care for much of the past decade-- and the problems, the impacts, and the costs have risen to critical levels once again.

Tragically, the status of many children in foster care is as bad as it was when we undertook reforms more than a dozen years ago, although reasons for their placement, in many cases, have changed dramatically. The number of children in the foster care system may climb to more than a half million over the next few years. Too many of these children are growing up and drifting in a system designed for short-term care. In particular, increasingly complex and interrelated problems plague these children and their families, and have overwhelmed all available services, resources, and case workers.

During the past several years, parents, children, caseworkers, and advocates have provided gripping testimony to the U.S. House Select Committee on Children, Youth, and Families about the trauma inflicted by an overburdened and insensitive system on foster children. One child had so many different placements he couldn't remember them all. A mother told the Committee of having to place her child in foster care merely to secure services he needed. Caseworkers told of children sleeping on office desks because there were no appropriate placements.

The drug epidemic, the AIDS crisis, the doubling of child abuse reports, the increases in the rate of child poverty and the steep increase in the number of homeless families have fueled youth and family crises wholly unanticipated in the late 1970s. The impact of these new developments has been severely compounded by the failure of federal and state governments to enforce the law or address those problems with the speed and comprehensive efforts they require.

On the Executive Branch level, the Department of Health and Human Services has utterly failed to implement and monitor the law. One of the Reagan Administration's first acts in 1981 was an effort to repeal P.L. 96-272. When Congress refused to weaken the law, the Department effectively repealed it through lax and ineffective enforcement. We have, to date, seen little evidence of changes in these past policies by the Bush Administration.

The Department must bear a large burden for the child welfare system's inability to meet the demands of children and families in its care. But there is plenty more blame to share. Congress has repeatedly failed to allocate sufficient funds through mental health, child abuse, titles IV-B and XX programs, among others, to underwrite the cost effective preventive and reunification services without which P.L. 96-272-- and the foster care system itself-- cannot succeed. Most state governments, even during more prosperous years of the mid-1980s, failed to give adequate support to the growing and increasingly complex needs of their foster care systems.

The growing complexity of the child welfare population demands that we develop more accountable and effective programs in the 1990s--and that we fund them adequately.

We must recognize that labeling children by systems has too often become a poor excuse for not providing them with appropriate services. Whether we are talking about children in the foster care system, the mental health system, or even the juvenile justice system, we are talking about the same children with the same mental health, educational, and placement needs.

We need to ensure that families in trouble receive the assistance they require to solve their problems, regardless of which "system" they have entered.

These are not just sound policy goals: they are sound fiscals strategies, too. We now spend in excess of $1 billion a year to maintain children out-of-home, rather than investing those same resources in efforts that can successfully prevent placement or shorten its duration. Without such alternatives, the child welfare system is doomed to inadequate crisis intervention.

If we are to meet the challenges of the 1990s, we must increase urgently needed preventive and crisis intervention services, give states the guidance and support they have asked for and we have promised, and demand accountability guaranteeing children protection and care.

Ten years ago, we promised to clean up the foster care system, save money, and help children and families through enactment of P.L. 96-272. For tens of thousands of children, we didn't keep that promise, while the conditions of children and the foster care system itself have deteriorated further. Those children, and the severely complex problems that have scarred their young lives, will remain a challenge to our society for the remainder of their lives. If we do not overcome our indifference and respond to the needs of our families, these children, and those who will follow them into the foster care morass, will remain a crushing and costly burden to the United States throughout the next century.

U.S. Representative George Miller is a leading spokesperson on children and family policies and natural resources. He has represented the Seventh District, (Contra Costa County), of California since 1975 and since 1983 he has chaired the House Select Committee on Children, Youth and Families.